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Coal. Federal fuel distributor.

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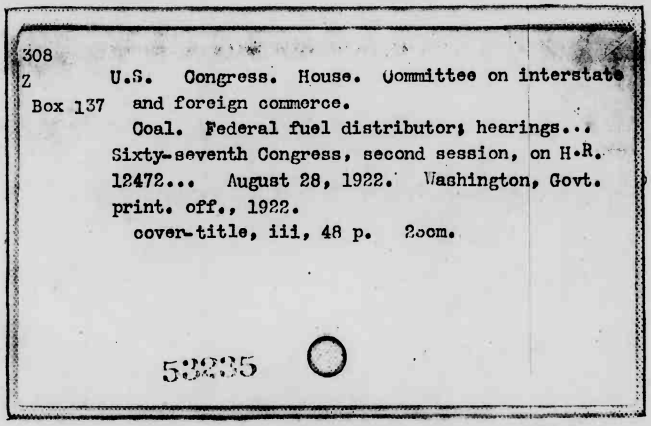

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COAL

FEDERAL FUEL DISTRIBUTOR

HEARING

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS
SECOND SESSION

ON

H. R. 12472

TO DECLARE A NATIONAL EMERGENCY TO EXIST IN THE PRODUCTION, TRANSPORTATION, AND DISTRIBUTION OF COAL AND OTHER FUEL, GRANTING ADDITIONAL POWERS TO THE INTERSTATE COMMERCE COMMISSION, PROVIDING FOR THE APPOINTMENT OF A FEDERAL FUEL DISTRIBUTOR, PROVIDING FOR THE DECLARATION OF CAR-SERVICE PRIORITIES IN INTERSTATE COMMERCE DURING THE PRESENT AND ANY SUCCEEDING EMERGENCY, AND TO PREVENT EXTORTION IN THE SALE OF FUEL

AUGUST 28, 1922

WASHINGTON
GOVERNMENT PRINTING OFFICE
8209 1922

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

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COAL—FEDERAL FUEL DISTRIBUTOR.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.
Monday, August 28, 1922.

The committee this day met, Hon. Samuel E. Winslow (chairman) presiding.

STATEMENT OF MR. CLYDE B. AITCHISON, COMMISSIONER, INTERSTATE COMMERCE COMMISSION.

Mr. AITCHISON. I may say, Mr. Chairman, that I am not here as a representative of the Interstate Commerce Commission, because the Interstate Commerce Commission has not had an opportunity to consider the bill which is before you, but I am here because, by direction of the President, a committee was appointed, consisting of the heads of the Department of Justice, Interior and Commerce, and a member of the Interstate Commerce Commission, with a fifth member chosen from the outside, for the purpose of coordinating the work of the various governmental departments, and all of them, during the existing coal emergency.

I am not going to take any of the short amount of time allotted to me in a recital of the emergency condition. I may say that at the present time, looking to the week which is to come and assuming the most roseate view of the situation, that possibly there will be produced 8,000,000 tons of bituminous coal. That is a figure which we have not reached since probably some time in March before the strike. In order that the country may be comfortable, feel safe and begin to build up that fluid reserve of working capital in coal which is necessary, we should be producing at the present time, and continue to produce until the end of Lake navigation, probably as much as 13,000,000 tons of coal a week, so that we are running from four to six million tons short, bearing in mind the fact that anthracite is not being produced in any quantity whatsoever. That is a condition which naturally lends itself to speculation and profiteering. The presidential committee was created at a time when Congress was not in session and we have undertaken, by cooperattion to do two things: To take the limited amount of coal produced—4,000,000 tons a week at the time the committee was created—and put it where it was needed for the most urgent purposes in keeping the country going and, secondly, to prevent skyrocketing prices, which naturally follow both upon such shortage and upon any governmental interference in the natural flow of traffic.

At the present time production is increasing, and it seems possible that there will have to be some relaxation or should be some relaxation in the grip which has been maintained upon priorities, and the matter be thrown more open to the general public for obtaining the coal necessary. Nothing at the present is being produced which can go to industry in general as distinguished from highly essential industry, such as public utilities, railroads, governmental purposes, the manufacture of foodstuffs, and the like. To control that situation and if prices are to be kept within limits, obviously some legislation along the line of the existing bill, or that which is contemplated by the President's recent message to Congress, is, in the judgment of the presidential committee, essential. The bill drafted has had the general examination of the presidential committee and in its essential outlines has been approved by the members thereof, consisting of the representatives of the Attorney General, of the Secretary of the Interior, the Secretary of Commerce, myself, and the lay member, Mr. Spencer, who at the present time is acting as Federal Fuel Distributor.

Mr. HUDDLESTON. Do you refer to the bill we have before us or to the other bill, because, as you know, two bills were sent down by the President.

Mr. AITCHISON. Both have been considered, but I understand we are now addressing ourselves to the committee bill, and I was doing so.

The essential outlines of the bill are not difficult to grasp. There is, first, the general declaration of an emergency, and, secondly, a provision that the President shall appoint a fuel distributor; third, a provision for the Fuel Distributor getting information as to the sources of supply, the places where the coal is, and, naturally, the important question of a fair price, the just and reasonable price which should be necessary for the fuel. I may say that the bill covers not only coal but fuel generally.

Mr. SANDERS. What would that include?

Mr. AITCHISON. It would include fuel oil, gasoline, kerosene, as well as all forms of coal, and also include coke. I presume it would include or be broad enough to include cordwood, although there is little of that necessarily involved. It is highly important that he shall ascertain what is a just and reasonable price, and he is authorized to make appropriate recommendations pertaining thereto to the Interstate Commerce Commission, either on his own motion or when the commission requests it. There is a provision making the records and data of the Federal Fuel Distributor accessible at all times to the Interstate Commerce Commission.

The broad powers which are conferred upon the Interstate Commerce Commission by the Esch car service bill of 1907, as amended by section 402 of the transportation act, I take it the committee is familiar with. Those powers, the commission has held in the past, are not broad enough to permit us to lay down car service rules solely with respect to the question of price. We take it that price is one element which fits in with other elements and may affect transportation and can be considered in that regard, but if legislation for the future is to address itself through the medium of the extraordinary car service powers of the Interstate Commerce Commission and reach price most all of us frankly recognize that that power must be so broad in its terms that we can reach the case of 100 per cent car supply where there is no transportation disability and say to the prospective shipper that "because the price which you are demanding for your product is extortionate you should not participate in interstate commerce." We have got to come flatly to that situation or the control does not exist.

The inent of section 5 of the act is to permit the Interstate Commerce Commission—indeed the section requires it—to take into consideration recommendations made by the Federal Fuel Distributor and give voice to them by appropriate directions both for priorities and embargoes.

The legislation proposed is not in any way to be taken as impairing the existing obligations and duties of the Interstate Commerce Commission but is supplemental thereto, and the commission is authorized to use all the powers it has under existing law in carrying out the provisions of this emergency legislation.

There is the usual and the necessary rule in section 7 giving the Federal Fuel Distributor authority to make the necessary rules and regulations with respect to the carrying on of his administrative work, the appointment of the necessary agencies he may have to have, etc., and also for the interchange of data between the Federal Fuel Distributor and the other departments of the Government.

This is legislation which is proposed to be enacted in time of emergency. Manifestly the emergency may come again and it may come at a time when Congress is not in session. It came this time when both Houses of Congress were not in session and when legislation was impossible. In the draft of the bill, therefore, it is provided that the President may suspend the operation of the statute when, in his judgment, the existing emergency is over—and that covers all the matters I have mentioned—and when a subsequent emergency arises he may again revive the operation of the statute by similar proclamation.

Quite important, in the judgment of those of us who have had to do with car service matters in the past, is section 9 of the act which, in terms, makes applicable to violations of the car service rules the rule in the Elkins Act prohibiting discrimination in rates. It is possible that the Elkins Act is broad enough to cover other discriminations, but we feel it is well to make it absolutey clear that it covers an attempt to procure a discrimination, obtaining it and misusing it in violation of any of the orders of the commission.

Under the car service section there is also carried a provision that anyone who shall by willful misrepresentation, or by any fraudulent device or means whatsoever, procure or cause to be issued any order or direction for priority, or who shall knowingly or willfully use or cause to be used any fuel for purposes other than those for which any order or direction for priority is issued, shall be deemed guilty of a misdemeanor, and shall be subject to a penalty.

A jurisdictional clause based on that and the Elkins Act is provided. The appropriation covered is $250,000, available until expended, including payment for personal services in the District of Columbia and elsewhere. It is also provided that expenses which have already been incurred in this work under the direction of the President—which have been borne, as I understand it, largely out of the private pockets of public-spirited citizens—not to exceed $50,000 may be reimbursed upon the certificate of the President.

I believe, Mr. Chairman, that sufficiently covers the outline of the bill.

The CHAIRMAN. Is it now your pleasure to answer questions?

Mr. AITCHISON. Yes.

Mr. SANDERS. Mr. Commissioner, the real emergency for which you deem legislation necessary is the danger of high prices?

Mr. AITCHISON. For which we need this legislation, yes.

Mr. SANDERS. You now have very broad powers in the interstate commerce act, as amended, with reference to distribution?

Mr. AITCHISON. I think so.

Mr. SANDERS. Really, this act, so far as it deals with distribution, does not enlarge the powers of the commission.

Mr. AITCHISON. Well, it undoubtedly does by authorizing us to receive the recommendations of the Federal Fuel Distributer as to where coal ought to go and supply it there. However, we are not organized for such work. It never has been the concept of the duties imposed upon the Interstate Commerce Commission that it is to create commerce or to forbid it. Our duty is to expedite it.

Mr. SANDERS. I understand that. That is a matter of making a survey and getting information but I am talking about the powers of the commission. So far as your powers over priorities and over the question of sending coal into a certain region where they need it at once—so far as your powers of action are concerned they are not increased by this act.

Mr. AITCHISON. I think they are.

Mr. SANDERS. In what respect?

Mr. AITCHISON. At the present time I do not believe the Interstate Commerce Commission has or should exercise coercive power to create the relation of buyer and seller.

Mr. SANDERS. What do you mean by that?

Mr. AITCHISON. I conceive that we have the power to say that coal going into a given district should receive a priority but that assumes that the one who asks the priority is willing to use it. However, in the past we have found, and within the last two weeks, cases of districts which have said, "We are not interested in priorities; we do not care to receive any priorities; we do not wish to ship under your priority orders and we will wait until cars are distributed in the usual course, and then we will ship where and as we please."

Mr. SANDERS. This would not give you power to compel them to ship?

Mr. AITCHISON. Yes; I think it would. I think in a case of that sort the fuel distributor would ask us and we could levy an embargo on that district.

Mr. SANDERS. But if you levy an embargo that does not compel him to ship.

Mr. AITCHISON. No; but is shuts him off. At the present time, after the priorities are given, he has the right to ship under a fair distribution of the cars.

Mr. SANDERS. Then you think this gives you an additional power with reference to an embargo?

Mr. AITCHISON. Yes.

Mr. SANDERS. You stated in your summary of the provisions of the act that they provided—I am not using your exact languege—that the Federal distributor should fix the schedule of fair prices. The wording of the act is, subdivision C, that he shall ascertain "the prices normally and usually charged for such coal and other fuel and whether current prices, considering the costs of production and distribution, are just and reasonable." That is a negative power with reference to what are unreasonable prices rather than a positive power to adjudge what are reasonable prices, is it not?

Mr. AITCHISON. Yes. Personally, I would have no objection to broadening that to include the positive direction or authority for him to fix the just and reasonable charge.

Mr. SANDERS. In the different conferences that have led up to the suggestion of this legislation to meet this emergency have you reached the conclusion that the Federal Fuel Distributor should fix the fair and reasonable prices of coal throughout the country generally not for the purpose of saying to anyone, "You can not sell coal at any higher price," but for the purpose of determining car service have you determined that the Federal Fuel Distributor should fix the prices of coal throughout the country?

Mr. AITCHISON. I think the car-service feature is a means to the end and is not the end. As to whether the Federal Fuel Distributor, or some similar agency, should fix the maximum, I myself entertain no question, because I believe if all limits are removed we can not tell where the skyrocketing will end, if we may julge by the past.

Mr. SANDERS. So far as your understanding of the situation is concerned, then, you think the Federal Fuel Distributor should fix the maximum prices to be charged for the coal?

Mr. AITCHISON. A just and reasonable charge; yes.

Mr. SANDERS. And, then, that he should make——

Mr. AITCHISON (interposing). Pardon me. That, of course, is at the mine.

Mr. SANDERS. That is at the mine?

Mr. AITCHISON. Yes.

Mr. SANDERS. And no other place?

Mr. AITCHISON. No.

Mr. SANDERS. And the reason you think he should fix it at the mine and no other place is because you do not think the constitutional powers of the Federal Government are sufficient to authorize him to fix them any place else?

Mr. AITCHISON. I think undoubtedly that Congress has the right to prescribe the conditions under which this highly vital commodity shall move in interstate commerce, but after the commodity has reached a State and become mingled with the corpus of the property in the State, then I believe it is a matter for State regulation and that the responsibility should be placed upon the States.

Mr. SANDERS. Then you think our power is limited to permitting the Federal Distributor to fix what he regards as a just and reasonable price of the coal at the mine and to use the powers under the commerce clause by permitting the commission to refuse car service to a shipper who does not make his contracts in accordance with those prices?

Mr. AITCHISON. That is the case, but, of course, you must bear in mind that the recommendation in section 3 covers not only the price but the equitable distribution of coal.

Mr. SANDERS. I understand that, but I am just talking about this question of the price. Now, then, when the Interstate Commerce Commission gets a recommendation, of course, the Interstate Commerce Commission may make the recommendation or may not make the recommendation.

Mr. AITCHISON. That is the case.

Mr. SANDERS. If the Interstate Commerce Commission, for instance, should think that the charge of a shipper was just and reasonable, notwithstanding the fact that the Fuel Distributor thought it was not just and reasonable, the Interstate Commerce Commission could disregard the suggestion of the Fuel Distributor and refuse to put an embargo on the shipper?

Mr. AITCHISON. Yes.

Mr. SANDERS. In the examination of the question have you found any real emergency so far as furnishing fuel to the Government departments is concerned?

Mr. AITCHISON. At the present time?

Mr. SANDERS. Yes.

Mr. AITCHISON. They have been obliged to concentrate all of their purchases in a single hand. However, we are fortunate at the moment because the Navy was forehanded enough to lay in a large amount of coal just before the emergency, but my understanding is that the other governmental departments, all working through Commander Cobey, are on rather thin ice.

Mr. SANDERS. How do they buy their coal?

Mr. AITCHISON. All purchases, I believe at the present time, are cleared through Commander Cobey.

Mr. SANDERS. There is no trouble about buying coal; the only question is whether they are going to have to pay too high a price.

Mr. AITCHISON. It is a question of paying too high a price and getting the cars.

Mr. SANDERS. You can furnish the cars.

Mr. AITCHISON. But when we do that, of course, we deprive others of their use of cars.

Mr. SANDERS. But so far as the Navy is concerned and so far as the Government departments are concerned, the difficulty is whether the price is going to be higher than Government officials want to pay.

Mr. AITCHISON. At the present time?

Mr. SANDERS. Yes.

Mr. AITCHISON. Yes.

Mr. SANDERS. That is the only emergency that needs new legislation.

Mr. AITCHISON. Yes.

Mr. NEWTON. Mr. Aitchison, we have a situation with reference to the shipment and storage of coal on the Great Lakes. At the great docks on Lake Erie, at Superior, Wis., and Duluth, Minn., they are storing not only hundreds of thousands of tons but I imagine they have a capacity for several million tons. Now, I understand that under the bill there is no question but what the Fuel Distributor can fix the maximum price at the mines, but there is no thought on the part of anyone, so far as I have been able to ascertain, that the fuel distributer, or any Federal agency, would attempt to fix the maximum price to the consumer in the States, but at the same time it was my thought that if the dock companies, either at the Lake Erie docks, at the Superior docks, or at the Duluth docks, attempted to charge an exorbitant price for the coal that was in their possession and of which they had obtained possession by reason of priorities, that the Federal Fuel Distributor would have jurisdiction to set a maximum price and prevent extortion. Now, information has come to me over Sunday that at Duluth and Superior some of the dock companies have already set a very heavy price upon bituminous coal on priority shipments. Is it not your understanding that the bill as written would confer jurisdiction?

Mr. AITCHISON. When I answered Mr. Sanders a minute ago with respect to control of prices at the mines I had in mind the great general situation and not the particular one that Mr. Newton mentions of what might be called a sort of submine, where the production of the mines is collected, because clearly the provisions of the act are broad enough to cover a case such as Mr. Newton has mentioned, where the commodity moves in interstate commerce from the docks.

Mr. NEWTON. But it was the thought of everyone I have come in contact with that there is something to be left to the States, to see that there is a proper agency within the States for proper distribution, and so on, and to see that extortionate prices are not charged and, as I understand, we are not assuming to handle that phase of the situation.

Mr. AITCHISON. No.

Mr. BARKLEY. You suggested awhile ago, in answer to Mr. Sanders, that this price fixing was to apply only at the mine on the theory that after the coal had ceased to be an object of interstate commerce and has become mingled with local distribution it is impossible for Congress to fix prices. Is not that also true at the mine? How can you separate that coal which is to enter interstate commerce from that which is to stay in the State so as to be able to fix the price at the mine of that which goes into interstate commerce and not fix that which remains in the State?

Mr. AITCHISON. Well, I take it, Mr. Barkley, that while the question of car distribution has never been passed on as between the powers of the State and the Federal Government that whatever scheme is hit upon by Congress must necessarily control interstate commerce as well as intrastate commerce in its general scope.

Mr. BARKLEY. I am not speaking about car service, but I am speaking about the power of this Fuel Distributor to fix a reasonable price of coal at the mine.

Mr. AITCHISON. Take a specific case, we will say, of a mine in Kentucky. If the coal is for use at a point in Kentucky I do not understand it is the intent of the bill that the Fuel Distributor should there fix the price of that coal.

Mr. BARKLEY. So this will not apply to people who buy coal that is mined within their State?

Mr. AITCHISON. No.

Mr. BARKLEY. Either at the mine or at the point of distribution?

Mr. AITCHISON. That is correct.

Mr. BARKLEY. I do not know that there is any way to remedy that situation, but would not that probably result in a discrimination against the home consumers of coal, unless the States take some action which will enable some agency of the State to fix the same kind of regulations, applicable to home consumption, as we are trying to fix here for interstate shipments?

Mr. AITCHISON. Well, if the States are desirous of preventing that discrimination why should they not take action similar to that which Congress is now considering?

Mr. BARKLEY. It might be necessary to call the legislatures into extraordinary session in order to do that.

Mr. AITCHISON. That has been done in some States.

Mr. BARKLEY. Section 5 provides that "the Interstate Commerce Commission is authorized, and is hereby directed, to receive and consider the said recommendations of the Federal Fuel Distributer and in its discretion to issue such order or orders for priorities in car service, embargoes," etc. Do you interpret the words "in its discretion" to apply to the manner in which these orders are to be issued or that there shall be orders issued?

Mr. AITCHISON. I think the intent of the section—whether it is happily worded or not—was to create a form of orders which the commission should consider and which should be sufficient to justify us in making a car service direction solely upon the matter of distribution, as recommended by the Fuel Distributer, or prices recommended by him.

Mr. BARKLEY. While it has created a little confusion in my mind, the intent of that language is that after this recommendation has been made to the commission, then it is to be in the discretion of the commission whether it will act at all?

Mr. AITCHISON. That is the case.

Mr. BARKLEY. And if so, how?

Mr. AITCHISON. Yes, sir.

Mr. HUDDLESTON. Under the transportation act, as now in effect, the Interstate Commerce Commission has power to deal with car distribution for intrastate commerce as well as for interstate commerce?

Mr. AITCHISON. That question has never been passed upon. Happily, we have been able to avoid any issue with the States on that.

Mr. HUDDLESTON. Let us assume that there is a certain limited car supply, and that the placing of these cars in intrastate commerce will effect the supply for interstate commerce: Necessarily, it follows that the commission would have the right to protect the supply for interstate commerce, although it meant the shutting off of the supply for intrastate commerce?

Mr. AITCHISON. I do not know that it would necessarily mean the shutting off of the supply, but it would mean that they would be put on the same basis. There would be no discrimination against intrastate commerce. I think you are right in that regard, but it is a question that has not yet been passed upon.

Mr. HUDDLESTON. Do you not think that Congress under the commerce clause of the Constitution has complete control of the instrumentalities of commerce?

Mr. AITCHISON. Yes, sir.

Mr. HUDDLESTON. Which includes cars that may be used in intrastate commerce?

Mr. AITCHISON. Yes, sir. I think, also, that there can not be two rules of distribution, one for interstate commerce and the other for intrastate commerce.

Mr. HUDDLESTON. Under that power, do you not think that this bill would authorize the commission, if it should be so minded, to deal with the subject of placing cars for intrastate coal?

Mr. AITCHISON. In speaking for the presidential committee, I might say that we discussed that question, and there is no intent by virtue of any language, or otherwise, to either extend or diminish the customary power of the Interstate Commerce Commission with respect to car service, except to include this special form of emergency control. In the case you mention, if we have that jurisdiction, it is covered by the language of the bill, but that question has never passed upon by the courts, and we are not seeking here by indirection to acquire any jurisdiction we do not have.

Mr. HUDDLESTON. Is it your idea that the commission will have such power?

Mr. AITCHISON. Speaking simply for myself, I think that Congress, in pursuance of the delegation of powers, has given the commission authority to prescribe just and reasonable car rules to meet the emergency, and to the extent that State rules may differ from them, or tend to defeat the application of the interstate rules, they must stand aside.

Mr. HUDDLESTON. I have in mind that where coal producers are permitted to charge for intrastate coal a higher price than they are allowed to obtain for interstate coal, they will discriminate against interstate coal, and the result, or the effect of this bill, would be to greatly diminish by diversion the supply of coal for interstate purposes, so that it seems to me that in order to deal with the subject intelligently we are compelled to deal with the whole situation.

Mr. AITCHISON. I believe we can prevent the diversion from interstate commerce of an undue proportion of the cars.

The CHAIRMAN. Mr. Aitchison, you have about six minutes remaining. Who would like to question Mr. Aitchison further?

Mr. NEWTON. I simply want to say that it was my idea that the bill was designed to cover just that situation.

Mr. RAYBURN. You have stated that the purpose in asking for the power conferred by this bill was to fix the price of the coal at the mine only.

Mr. AITCHISON. I have since qualified that.

Mr. RAYBURN. In what way?

Mr. AITCHISON. I think that it covers the case where the coal is offered for interstate movement and up to the point where it becomes mingled with the general corpus of property in the State.

Mr. RAYBURN. Where would that be? Illustrate that for me.

Mr. AITCHISON. I think I can give you a good illustration: Coal moving from Ohio to Toledo naturally would be intrastate coal, provided at the time it starts from the mine in Ohio its destination at the lake front is in the intent of the consignor there fixed, but if that coal is simply pausing at Toledo, and is designed for the Northwest, for transshipment by water, it is interstate coal, although the movement is wholly within the State, and the Supreme Court has so held.

Mr. RAYBURN. What effect would that have?

Mr. AITCHISON. I think that the bill would clearly cover the case of the production of coal by an Ohio mine for transshipment from a Lake Erie port in Ohio to a point in some other State, but it would not cover production at the same mine destined to the same port where the intent was that the coal should be consumed locally. That is, perhaps, as extreme an illustration as I can give.

Mr. RAYBURN. Can you tell me what was the price of coal on an average at the mine six months ago?

Mr. AITCHISON. Not offhand.

Mr. HOCH. So far as the constitutional power is concerned is this bill based solely upon the theory that in regulating interstate commerce Congress has the power to determine the conditions under which a commodity may enter interstate commerce?

Mr. AITCHISON. That undoubtedly entered into consideration, but the theory of the bill is broader. It is based upon the welfare clause, upon the post-road section, and upon the Army and Navy clause.

Mr. HOCH. Do you think that, as a matter of fact, under the constitutional power the question of emergency enters into it?

Mr. AITCHISON. Yes, sir; I do, and especially under the welfare clause.

Mr. HOCH. Which welfare clause in the Constitution?

Mr. AITCHISON. The preamble, to take care of the general welfare, which is the main purpose for which the Government was created. If the sovereign is impotent in time of emergency to prevent its own dissolution, its whole purpose fails.

Mr. HOCH. Do you think that the phrase "general welfare" in the preamble is a grant of power?

Mr. AITCHISON. I think that it clearly states the right of the sovereignty, and that it constitutes a grant of power. I make no pretense of being a constitutional lawyer, and that may be said to be a layman's opinion.

Mr. HOCH. Under your present view, do you think there is any limitation upon the power of Congress to determine that an emergency does exist in reference to the general welfare, as contemplated by the preamble of the Constitution?

Mr. AITCHISON. The Supreme Court of the United States, in the recent case of Stafford *v.* Wallace, a packing-house case, states that—

"Whatever amounts to more or less constant practice which threatens to obstruct or unduly to burden the freedom of interstate commerce is within the

regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it."

I think that the same rule applies here.

Mr. GRAHAM. What is that citation?

Mr. AITCHISON. Stafford *v.* Wallace, decided May 1, 1912, Advance Sheets, page 476. I think the same principle applies in the case of the welfare clause.

Mr. HOCH. When you were answering the question a few moments ago with reference to fixing the price, whether at the mine, or in the hands of brokers or anyone else, to be shipped in interstate commerce, you had in mind there solely th question of the power of the Interstate Commerce Commission under this bill?

Mr. AITCHISON. Yes, sir; because this is virtually an amendment to the interstate commerce act, and the conditions prescribed in it, of course, fall within the limitations of section 1 of the interstate commerce act, in stating the proviso, with which I am certain Mr. Rayburn is familiar.

Mr. HOCH. If this bill has been based upon the other powers, under the general welfare clause, then you do not need to limit yourself solely to interstate shipments, and the question of whether it is coal intended for interstate shipment or intrastate shipment would not be considered?

Mr. AITCHISON. That is true, provided Congress wishes to do it, but, as I said, the intent of the committee framing the bill which has been submitted to you, was primarily for the purpose of prescribing a policy, at least, providing for such a degree of decentralization as was possible.

Mr. HOCH. I think we are touching upon the fundamentals of this bill, so far as the constitutional power is concerned, and if the welfare clause of the Constitution gives Congress the power to do these things then it gives it the power to control the coal, whether it be in interstate commerce or in intrastate commerce. That is, it also gives it the power to fix the price locally, regardless of any shipment at all.

Mr. AITCHISON. To continue the decision—

"This court will certainly not substitute its judgment for that of Congress in such a matter, unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent."

Mr. HOCH. I simply wanted to get your ideas upon the question of what theory this bill is based upon, so far as the Constitution is concerned.

Mr. AITCHISON. It was not with the committee in framing the bill originally a question of how far we could go constitutionally, but our attempt was to utilize our existing machinery which localizes the distribution in the States and to place upon them responsibilities where the power of Congress was lacking.

The CHAIRMAN. You are in favor of the passage of this legislation?

Mr. AITCHISON. Yes, sir.

Mr. HUDDLESTON. Do you believe that the general welfare provision of the Constitution is such a grant of power that this power could be founded upon it alone?

Mr. AITCHISON. Yes, sir; I think if it were founded on it alone, it would stand, bearing in mind the state of facts recited in the first section of the bill.

STATEMENT OF MR. EDGAR WALLACE, LEGISLATIVE REPRESENTATIVE OF THE AMERICAN FEDERATION OF LABOR, WASHINGTON, D. C.

Mr. WALLACE. Mr. Chairman, my attention was called to this bill yesterday, and I have given it some study. As I understand it, the bill takes cognizance of the fact that nearly all the coal bins in the country are empty; that the bituminous coal miners have started to work, but that there is a danger, judging by past experience, that everyone will try to fill his coal bin completely immediately; that that will cause competition in buying, or, in fact, a buyers' panic, and that there will be a runaway market in which the prices will go soaring; and that in order to aver such a situation, as I understand it, there are provisions in this bill that there shall be a coal distributor controlling it. As I understand it, it is provided that the industries shall get what coal they need immediately to keep them going, but that no one shall be allowed to get all the coal he desires, or so much coal as to make it impossible for other people to get coal, and so, in that way, it is sought to avert a buyers' panic. We are in favor of that bill, or I would say, we are in favor of that much of the bill. We think it would have a tendency to eliminate the parasite from the industry that generally appears in such circumstances as the present—that is to say, the wash buyer, if you understand what I mean by that term. I mean the man who never does anything toward producing a ton of coal; the man who does not consume any coal; the man who fills no purpose, but who in times of panic will buy a number of cars of coal, take a profit from it, and possibly pass it on to others who are just such buyers as himself.

I believe the bill could be made more explicit if it would outlaw just such purchasers as that. As I have said, inasmuch as the buying public, or the coal consumers, would be assured that the Government would see that they got coal as they needed it, and, recognizing that the bituminous coal industry can not only produce the peak demand, but can produce 25 per cent more than the peak demand, I believe that that part of the bill will be sufficient, also, to protect the public. I want to say this, that I am not in favor of any fixation of prices at the mines or anywhere else. The reason I am opposed to that is based upon past experience. The experience is that the Government fixes a maximum price, and that maximum price immediately becomes the minimum price. Furthermore, the Government can not, by its act, confiscate the property of the citizen, and, hence, the mine that is not economical, or the mine that is inefficiently managed, or the high-cost mine, becomes the standard, and the cost of coal is raised instead of being reduced at any attempt at price fixation that the Government can make and keep within its powers granted by the Constitution. Now, I believe that by protecting the consumers from this condition, or by averting fear, which is panic, and by making them recognize that the Government will see to it that they will get coal as they need it and when they need it, and the recognition of the fact that the industry is capable of producing plenty of coal, you will be able to prevent a runaway market. It will result in distributing the coal on hand as it is produced evenly over the country, and it will be beneficial. I want to say in connection with this that my fear of price fixation is based upon past experience.

If the gentlemen here will let their memory go back to the two industries that have been most disturbed in the last few years, you will find that they were industries that ran constantly prior to the war. There may have been local strikes here and there, but there was nothing very serious. There was never a railroad strike in the 30 years prior to the war of such consequence that it endangered the public. There was never a coal strike prior to the World War of such consequence that it endangered the public welfare generally, but since or during the war, recognizing those two industries as essential industries, there was Government price fixing in connection with them. There was Government price fixing and Government wage fixing at that time, and from that time, there has been a tendency to demand Government interference, or a tendency on the part of the Government to interfere. Instead of preventing disturbance in those industries, they have caused a disturbance in the industries. The men in looking to the Government for their wages will hold the Government responsible for the disagreeable circumstances that arise in their everyday life because of the wage they lack, or because of the wage that they think they should have, but which they have not got. The blame is put on the Government, and I doubt whether the Government itself can stand under those circumstances. I repeat that the fact is that when the owners of the industry and their men were let go untrammeled, each recognizing the other's rights, they had no such disturbances, and the sooner we get back to that condition the sooner we will have eliminated the periodical disturbances. I think that if we permit the Government now to intercede to the extent of fixing wages and fixing prices we will only have another just such disturbance in the immediate future or in the near future. That condition will continue.

I do not know that I have anything more to say except that I believe that this use of the Government power will have that result. I can not say much about constitutional power or whether th's power is granted to the Government, or not. I am not a constitutional lawyer, but I am somewhat of an observer, and my observation is that if the necessity arises, the power is granted, and there is not much question of whether the Government has that power, or not. If that power is used to distribute the coal so as to insure sufficient coal for the needs of the people, and to permit no one to grab it all, and thus cause a panic through competition in buying, the coal industry would be benefited. That is true, because, otherwise, a few people would fill their bins, or they would try to do it, and others would have to go without it. Then, the business of those that would go without would be lost to us forever. No one would be injured by that use of the power of the Government, and I do not believe

any question would be raised as to whether, or not, the Government has that right. The experience of the past indicates that some order in the distribution of coal is necessary.

Mr. BARKLEY. You have spoken about the fact that when the Government has fixed a maximum price it has become the minimum price. Is there any way to be absolutely sure of that? In other words, if there had been no maximum price fixed by the Government, is it certain that the price which would have been charged would not have been higher than that which the Government actually fixed?

Mr. WALLACE. If there was an absolute scarcity of coal, that might be true—that is, if the production of coal did not quite come up to the demand for the current demands for coal, then I believe there would be that danger, but we have here the assertion that the coal industry has 300,000 more miners than they need in the industry. Now, with order in the distribution of coal, and with the mines always producing a little more than is called for, I do not believe there will be any danger of the price being raised above what the Government would fix as a minimum price. Remember that the Government would have to consider the high cost of mining as its standard.

Mr. BARKLEY. I understand that recently, in an effort to get a voluntary agreement as to price, Mr. Hoover, in conferring with various coal operators, fixed on a maximum price for the whole country, but that price varied some, dependent upon the cost of production. Do you know anything about that?

Mr. WALLACE. If you were to place a flexible price upon the coal, dependent upon the cost of production, you would eliminate the incentive for efficiency.

Mr. BARKLEY. I understand that.

Mr. WALLACE. You would have a cost-plus system.

Mr. BARKLEY. I am not urging that, of course, but, under this law, if the Government is given that power, could not the price be adjusted according to the cost so that the higher cost would not necessarily be the standard for the whole country?

Mr. WALLACE. I believe there would be more difficulties. There are other questions that enter into the bituminous coal industry that you gentlemen possibly have had no opportunity to know about. For instance, I worked in a coal mine. I dug coal in the little town of Quincy. There were three veins of coal there. One vein is harder to dig than another, but the people wanted that coal. It is a better quality of coal, and does not burn up the stoves. The women paid higher prices for that coal. The cost of mining it was a little higher. Now, that is the case all over the country. There are so many variations that you might say there are as many variations as there are coal mines. Some have a higher cost than others. Some of them are dependent upon proximity to markets. If it were not for the freight rates that equalize them, they could not operate them.

Mr. BARKLEY. I have seen it stated in the papers, and I have heard from various sources, that there are many thousands more miners in this country than the mines actually need under normal conditions.

Mr. WALLACE. Yes, sir.

Mr. BARKLEY. Assuming that is true, is it your belief that the surplus labor will be immediately put to work in the production of coal, that being necessary by reason of the idleness of the mines during the last two months?

Mr. WALLACE. Yes, sir. There are surplus men that can accommodate the surplus mines.

Mr. BARKLEY. Under those conditions, how long do you think it will take for the supply to catch up with what it would have been if there had been no cessation of work?

Mr. WALLACE. Two months or less than two months. In my opinion, immediately upon knowledge that the Government is going to see that each industry and each domestic consumer and the needs of the Northwest will be taken care of, I believe things will become normal.

Mr. BARKLEY. Do you think that prolonging the anthracite strike will have any effect upon that?

Mr. WALLACE. It will have some effect, but I think the anthracite strike will be settled. Of course, I do not know whether it can be or will be, but of course there are some anthracite markets that will be supplied with bituminous coal. That will require more bituminous coal.

Mr. BARKLEY. Will the continuance of the railroad strike affect it?

Mr. WALLACE. Naturally, if they can not haul the coal it will prevent the men from working,

Mr. HUDDLESTON. Mr. Wallace, it is my recollection that we produced 6,000,000 tons of bituminous coal last week.

Mr. WALLACE. Six million tons—that is not sufficient. I do not know about that, and I am not sure. I have not had the figures. It is possible that that might be so, considering the fact that the mines have been idle a long time. The people might go in there and dig coal one day and find that they could not load it.

Mr. HUDDLESTON. In what districts are the miners idle?

Mr. WALLACE. A good many of them are idle in the Pittsburgh district of Pennsylvania, in Fayette County, Pa., and in the Kanawha district of West Virginia. That is true in scattered mines over the country.

Mr. HUDDLESTON. Settlements have been made.

Mr. WALLACE. Settlements have been made with the large producers.

Mr. HUDDLESTON. How long do you think it would take to get back, we will say, to 8,000,000 tons per week.

Mr. WALLACE. We ought to be doing that this week, or more than that this week. I should say 12,000,000 tons.

Mr. SANDERS. Mr. Aitchison stated that the average production last year was 8,000,000 tons, I believe.

Mr. HUDDLESTON. Mr. Wallace, what I had in mind was the car supply situation and the fact that many mines have been abandoned and many men have abandoned the industry, men who used to dig coal have gone to doing other things. They have left their original work, and there are many other factors that enter into the proposition.

Mr. WALLACE. There is a fact there that must be considered. I understand the coal industry, possibly, better than any other. You must consider the fact that there is a good deal of idleness in the mines, within the mines, which is not due to the miners and not due to the operators, and that is due to the fact that they do not get the cars they want. I think there is a scarcity of men. I should say that one-fifth of the men have left the mines, or are not working in the mines, and four-fifths will have to get out as much coal as five-fifths.

Mr. HUDDLESTON. How long will it be, do you think, before they can reach that big production?

Mr. WALLACE. It might take a day or two; there will be some fields where it would take a few days.

Mr. HUDDLESTON. The highest production we have ever had in this country was during the war, in 1918, when a single week's production amounted to 13,000,000 tons. When we did that we then strained ourselves to the extreme limit.

Mr. WALLACE. In March we produced 12,000,000 tons.

Mr. HUDDLESTON. We gradually worked up to that production.

Mr. WALLACE. You must remember this, that while that was a wonderful production, a big production, some of our most competent miners, our ablest miners, young men, were abroad.

Mr. HUDDLESTON. About 75,000, I believe.

Mr. WALLACE. The mine forces had been diluted with men less competent, and I believe with the force that is at work now at least 11,000,000 tons ought to be produced.

Mr. HUDDLESTON. Within a few weeks.

Mr. WALLACE. Practically immediately.

Mr. LEA. Referring to the matter of available cars, if the railroad strike and the coal strike were terminated, there would be a limitation on the distribution, on account of the impairment of cars, would there not?

Mr. WALLACE. There would be something in that.

Mr. LEA. Is it not true that there are also strikes, independent of the big strikes, pending in localities over the country?

Mr. WALLACE. Yes; but still the number of men at work will overproduce the current demand; the number of men who are at work will soon make up the deficit.

Mr. LEA. In addition to the current demand, there is a depletion of the normal surplus?

Mr. WALLACE. Yes; and that is a danger. If I understand this bill, it is intended to prevent that from becoming a real danger by supplying the demand and a little bit more.

Mr. RAYBURN. I understood you to say you were against the general policy of Government price fixing?

Mr. WALLACE. Yes, sir.

Mr. RAYBURN. Do you think this bill ought to be amended and that the provision giving the coal distributors the power to fix prices should be eliminated?

Mr. WALLACE. Yes, sir.

The CHAIRMAN. Will you have the committee to understand that you favor the general purposes of the bill?

Mr. WALLACE. I favor the general principles of the bill, but am opposed to any price fixing.

Mr. RAYBURN. The general principle is that of price fixing, is it not?

Mr. WALLACE. I can not say that it is. I think it is a matter of coal distribution, to see to it that the coal is distributed at the places of the buyers.

Mr. RAYBURN. If the draftsmen of this bill say that the main part of this bill is to regulate and prevent profiteering they do not agree with you as to the main part of this bill.

Mr. WALLACE. There is profiteering outside of the work at the mines; more away from the mines than at the mines, absolutely.

The CHAIRMAN. Was I correct in understanding that you thought the bill was aimed against profiteering and for that reason was desirable?

Mr. WALLACE. Yes, sir.

The CHAIRMAN. I would like to say to the members of the committee and to the witnesses that an arrangement has been made with the Secretary of Commerce to be here as near half past 10 as possible, and it may be necessary that the witness who is testifying at that time will have to be interrupted, and I would like to proceed with the next witness with that understanding.

Mr. Farrell, will you make a statement to the committee now?

STATEMENT OF MR. PATRICK J. FARRELL, CHIEF COUNSEL INTERSTATE COMMERCE COMMISSION.

The CHAIRMAN. Will you qualify, Mr. Farrell, by stating the position you occupy?

Mr. FARRELL. I am chief counsel of the Interstate Commerce Commission.

The CHAIRMAN. I may say, gentlemen, that Mr. Farrell is here by invitation of the chairman and not by any solicitation of the commission or himself.

Mr. FARRELL. It occurred to me, Mr. Chairman, that there was one thing that might be added to what has been said by Mr. Commissioner Aitchison.

In the decision of the Supreme Court to which the commissioner referred, the case of Stafford *v.* Wallace, which has not yet been reported in such a way that the citation can be given——

Mr. GRAHAM. Is that the stockyards case?

Mr. FARRELL. That is the stockyards case, yes. The Chief Justice made a very thorough review of the decisions relating to interstate commerce and when he reached what we perhaps would call the North Dakota case, the case of Lemke *v.* The Farmers' Grain Co., decided on February 27, 1922, he said:

"In that case it was held, on the authority of the Swift case, that the delivery and sale of wheat by farmers to local grain elevators in North Dakota, to be shipped to Minneapolis, when practically all the wheat purchased by such elevators was so shipped and the price was fixed by that in the Minneapolis market, less profit and freight, constituted a course of business and determined the interstate character of the transaction. Accordingly a State statute which sought to regulate the price and profits of such sales, and was found to interfere with the free flow of interstate commerce, was declared invalid as a violation of the commerce clause," indicating that an attempt by a State to fix the price before it reached the railroad at all, pending the time when it was being delivered to the elevators, although an interstate shipment, was violative of the commerce clause, since the grain when shipped was not all, but mostly, shipped in interstate commerce. I thought perhaps you would wish to have a reference to that decision.

Mr. SANDERS. What is your connection with the Interstate Commerce Commission?

Mr. FARRELL. Chief counsel.

Mr. SANDERS. You are an experienced lawyer?

Mr. FARRELL. I have been with the commission twenty-odd years.

Mr. SANDERS. You think the constitutional power upon which this bill is based is the commerce clause, do you not?

Mr. FARRELL. I am not certain what the result of an examination by the Supreme Court of the present bill, if it were enacted in its new form, would be. It is not my understanding that the welfare clause referred to has heretofore been used to any great extent in making our statutes. Whether it will be used in the future, I do not know, and what the result will be, if it is, I am unable at this time, of course, to predict.

Mr. SANDERS. Based upon your general experience as a lawyer, and giving an opinion about this bill and the constitutional power upon which it is based, you would rely chiefly upon the commerce clause, would you not?

Mr. FARRELL. I would, if I could. If I could come within the commerce clause and accomplish the purpose which seems to me to be the thing planned, I would do so.

Mr. SANDERS. And if you did not think you were within the commerce clause you would be doubtful whether the bill would stand?

Mr. FARRELL. I would have doubts, because I am not aware that any such question has ever been decided by the Supreme Court.

Mr. SANDERS. As a matter of fact, the Supreme Court has held that the general welfare clause in the preamble of the Constitution is not a grant of power.

Mr. FARRELL. It nevertheless explained for what the proposed powers which follow were granted.

Mr. SANDERS. Then the draftsmen of this bill are not depending on the welfare clause—

Mr. FARRELL. (Interposing) Yes, but——

Mr. SANDERS. As to the matter of price.

Mr. FARRELL. Except that the Constitution must be read in toto and not in pieces, and the purpose in view is one of the things to be considered in determining the power granted.

Mr. SANDERS. It seems to me, in reading the bill, that those who drafted it, drafted it on the narrow margin of the commerce clause, and provided a way to fix the price so they could use the commerce clause.

Mr. FARRELL. It has been true, ever since I have known anything about the decisions of the Supreme Court, that the extent to which the powers conferred upon the Federal Government by the Constitution could be used would depend upon the changes in circumstances and conditions that take place from time to time, and, as far as the absolutely exclusive jurisdiction of States is concerned, that is confined to matters which do not affect interstate or foreign commerce; and, in determining whether certain matters do affect interstate or foreign commerce, the Congress of the United States has practically exclusive discretion. That is to say, the Supreme Court looks to the Congress to interpret the Constitution as to what it was intended the Federal Government should regulate and does not interfere with the interpretation of the Congress unless it is clear that the thing which Congress assumes or declares exists does not in fact exist.

Mr. SANDERS. That is because it is assumed by the court that each Member of Congress, bound by his oath to support the Constitution, carefully weighs the constitutionality of every law he votes for, and when the case comes to the court it comes with the sanction of a majority of Congress and the President, and, being a coordinate branch of the Government, they will not overturn the act unless the other branch is clearly wrong.

Mr. FARRELL. Yes.

Mr. DENISON. Is there any other attorney whom the chairman consulted, except Mr. Farrell, who is present?

The CHAIRMAN. So far as the chairman knows, the other attorney consulted was Mr. Esterline, who, before we had reached our conclusion on Saturday to hold a hearing, had already started to Chicago.

Mr. DENISON. Then, I would like to ask Mr. Farrell one or two questions. This bill, if I understand it correctly, Mr. Farrell, gives the Interstate Commerce Commission the right, in its discretion, to fix or determine the price of coal to be shipped in interstate commerce?

Mr. FARRELL. I think this bill does not give the Interstate Commerce Commission any authority to fix the price of coal.

Mr. DENISON. What authority does it give?

Mr. FARRELL. It simply gives the Interstate Commerce Commission the authority to determine what should be the rules applying to the distribution and transportation of coal, in view of the purpose of Congress to prevent extortion in the sale of coal for interstate-commerce purposes.

Mr. DENISON. That is stating it in one way, but as a lawyer let me ask you this: I will leave out the repetition and go to the meat of the thing in section

5. It says: "The Interstate Commerce Commission is authorized, and is hereby directed, * * * in its discretion, to issue such order or orders for * * * embargoes * * * against any carrier or region, municipality, community, person, copartnership, or corporation, * * * so as best to meet the emergency, prevent extortion in prices charged for coal." If that means anything at all it means that the Interstate Commerce Commission must itself determine whether a price is an extortionate price. And if in its judgment it finds that it is extortionate it has the authority to issue an embargo against that person or company. That presupposes a consideration of the price to be charged, does it not?

Mr. FARRELL. It presupposes that the Interstate Commerce Commission will determine whether the purpose of the bill, which is to get coal to certain districts, will be interrupted by an extortionate price.

Mr. DENISON. It has to determine whether or not that is an extortionate price.

Mr. FARRELL. In its own mind it will probably arrive at a conclusion as to whether a particular price is an extortionate price.

Mr. DENISON. If the commission determines that a certain price for coal will be an extortionate price it will order an embargo against that shipper and prevent him from selling his coal.

Mr. FARRELL. It will prevent him from selling his coal by not allowing him to get cars, but it will not otherwise.

Mr. DENISON. It will prevent him selling that coal.

Mr. FARRELL. I think not; I think it will only be because of his inability to ship it in interstate commerce.

Mr. DENISON. Is not that the same thing?

Mr. FARRELL. I think not.

Mr. DENISON. If a man can not get cars in order to complete the sale, or deliver it, he can not sell it.

Mr. FARRELL. I think one thing would be more comprehensive than the other. The authority under the bill would not be entirely comprehensive, so far as selling coal is concerned.

Mr. DENISON. If the Interstate Commerce Commission decides that a price which a coal company or an individual charges for coal in interstate commerce is an extortionate price, it will prevent that company or individual from selling it.

Mr. FARRELL. I doubt if you could give the Interstate Commerce Commission any such authority under the Constitution. You would have to limit it to the purposes for which the Federal Government operates.

Mr. DENISON. I am asking about the facts.

Mr. FARRELL. I am saying that in my judgment the fact is not that the bill gives the Interstate Commerce Commission absolute power to fix the price of coal to be sold——

Mr. DENISON (interposing). It gives the commission power to prevent him from selling coal in interstate commerce.

Mr. FARRELL. To ship it.

Mr. DENISON. If they conclude that his price is extortionate?

Mr. FARRELL. They are not, by the provisions of the bill, given authority to prevent him from selling his coal at all, but they can embarrass him in selling it and having it shipped in interstate commerce by refusing to allow him cars if he does not fix a reasonable price.

Mr. DENISON. Do you not think they have the power to prevent him from selling his coal in interstate commerce if they have the power to withhold transportation for that purpose?

Mr. FARRELL. I understood you to ask me what the bill did.

Mr. DENISON. That is it. Does not the bill give the commission the power to deny the right of transportation from one State to another if the price is extortionate?

Mr. FARRELL. That is exactly what it does do.

Mr. DENISON. That is taking away from him the power to sell under those conditions?

Mr. FARRELL. The power to sell that particular class of coal and ship it.

Mr. DENISON. The right of an individual to sell or dispose of his property, or his coal, is a property right?

Mr. FARRELL. Not absolute.

Mr. DENISON. Is it your judgment as a lawyer that the right to own property includes the right to dispose of it?

Mr. FARRELL. Qualified always. No man has the absolute power over his own property, even.

Mr. DENISON. I am not asking about the absolute power. I am asking if you do not think the right to sell or contract to sell private property is a property right, under the Constitution?

Mr. FARRELL. Certainly; but you must always have in mind that the general welfare overrides private welfare.

Mr. DENISON. Now, then, this bill will authorize the Interstate Commerce Commission, under the conditions named in the bill, to deprive the owner of coal of a certain part of his property.

Mr. FARRELL. I am not sure it was his property right, because that seems to carry the idea that it is his absolute property right. A man's property right as an individual is qualified by the public's right, so I can not answer your question affirmatively in the way you have asked it.

Mr. DENISON. Do you think Congress has the right to determine the right of a person to sell his property; is that a legislative or judicial question?

Mr. FARRELL. I do not think Congress is exercising that right in this bill. It is simply providing that if he does sell for shipment in interstate commerce that he shall not exact an exorbitant price. I do not think the Congress could prevent a man from selling unless it could show that if he did sell, the public, in a particular over which Congress had power, would be embarrassed or unduly interfered with.

Mr. DENISON. Do you think Congress has the exclusive right to determine that question, so that if he is not satisfied with the judgment of Congress, he has not any other relief?

Mr. FARRELL. Under this bill he could not ship that coal in interstate commerce unless he complies with what the Federal Government, through its agencies, determine to be a reasonable price, provided he could apply to a court to review what the administrative tribunals of the Government might say that to be.

Mr. DENISON. This bill does not give him any right of review in the courts?

Mr. FARRELL. He would always have that right; the bill could not deprive him of a right of review in the courts to determine whether his constitutional rights had been taken away from him.

Mr. DENISON. If the Interstate Commerce Commission should, in its judgment, find that the price a man was going to charge for his coal was extortionate, and would stop him by issuing an embargo, what would be his remedy?

Mr. FARRELL. First, to determine whether Congress in conferring that authority upon the Interstate Commerce Commission, had exceeded its powers under the Constitution; second, to determine whether, even if the power under the Constitution had not been exceeded, the administrative tribunal which had exercised the power, had kept within the power.

Mr. DENISON. So the only remedy he would have would be to go into court and attack the constitutionality of the law.

Mr. FARRELL. And the lawfulness of the act of the administrative tribunal in complying with the law.

Mr. DENISON. You think that is givng a man his day in court?

Mr. FARRELL. I think so.

The CHAIRMAN. If Mr. Farrell will wait a few moments, we will hear Secretary Hoover at this time, according to our arrangement, and then other members of the committee may want to ask you some questions.

Mr. Secretary, the discussion is on the wisdom of passing this bill which is before the committee, H. R. 12472, to declare a national emergency to exist in the production, transportation, and distribution of coal and other fuel, etc., and the committee will be glad to hear from you in reference to that.

STATEMENT OF HON. HERBERT C. HOOVER, SECRETARY OF COMMERCE.

Secretary HOOVER. Mr. Chairman, I will be glad to answer any questions from the committee.

The CHAIRMAN. You have been referred to by the chairman of the committee as being in favor of this legislation.

Secretary HOOVER. Yes. I am convinced there is a very great necessity in the country for some restraint on profiteering in coal and some further authority in the matter of distribution.

The prices of coal to-day are fairly well known; they do not require any confirmation from me. It does seem to me that there is a public necessity for action; that there should be some restraint on the extortionate prices. It is obvious that regardless of the resumption of mining there will be an alteration of the situation from that of a short production to that of short transportation, that we have a continuous condition of effective famine in coal. In the face of shortage in supply the coal will go to the highest bidder, and price alone is not from a social point of view a proper basis of distribution. That means the poorer classes must bear the burden of the deprivation. If distribution is to be based solely upon the highest bidder it means suffering for a large portion of our population, and it des not in this situation mean no addition to production.

The usual defense of unlimited price during shortage is that it stimulates production. Our limit of coal at fair prices is a limitation on transportaton, not of mining. The bituminous coal mines to-day could probably produce, if they had all the transportation that they would require, somewhere in the neighborhood of 13,000,000 or 14,000,000 tons of coal a week. It seems scarcely probable that transportation could ever exceed the maximum attained under the most complete organization during the war, when it would not, even in periods of effective direction, average more than 11,000,000 tons a week. With the deterioration in transportation arising out of the shopmen's strike, the decreased motive power in the country, it seems to me impossible to contemplate any such movement as that. It seems to me that we would be lucky if we secure a movement of over 8,000,000 tons per week. The normal need of bituminous coal (within the next four or five weeks, as we enter into the winter season) is estimated at about 9,000,000 tons a week, and in addition to those 9,000,000 tons we have various other accumulated demands that must be, at least in part, satisfied.

The movement to the upper lakes is behind now something over 10,000,000 tons. The only hope of saving the situation in the Northwest is to vastly increase the volume of coal in lake shipments. Then that puts an increased and additional load upon the normal. Further than that we are behind some 35,000,000 tons in the production of anthracite coal. The anthracite production is positively limited at so much a week—it is not capable of expansion as is bituminous. This lost tonnage would normally have been in the consumers' bins by this time and cannot now be recovered. It must be made up by substitution of bituminous, which means an additional burden on the bituminous production. Beyond that again, the normal amount of coal required in circulation in the conduct of industry and commerce appears to be somewhere in the neighborhood of 25,000,000 or 30,000,000 tons. That circulating stock of coal has tremendously diminished; it probably does not amount today to 10,000,000 tons, if even that amount. Before industry can function properly and continuously it is necessary to have somewhere near the sum of coal I have stated in circulation. Therefore, in addition to the normal demands for bituminous coal, we have these three additions, the additional supply for the Great Lakes, the additional supply that will be required in substitution for anthracite and the additional necessity of building up stocks. Even if the coal situation could be solved quickly it would certainly require the movement of something between 13,000,000 and 14,000,000 tons of bituminous coal a week for the next 15 or 20 weeks.

I should think that in view of the fact that the railways have never been able to handle that volume of coal even at the best, and with the very much deteriorated motive power, they will not be able to prevent a shortage in delivery to consumers. In consequence it does seem to me that there will be an effective shortage for some time which will require a controlled distribution to the most essential of industries in order to maintain those industries and to protect the householder. In such a situation the possession of a coal car establishes a monopoly to the possessor upon which he can exact undue prices. In the matter of price restraint I would say this on behalf of the coal operators: Last May we undertook a voluntary arrangement with the operators in an endeavor to secure a restraint in the price of coal during the strike. Something like 70 per cent of the producing operators have adhered to those agreements. It is my belief that the great majority of operators of coal mines everywhere are anxious that there should be some effective restraint on price. The larger portion of those men are like other Americans—they wish a basis of fair business transactions. They know that they and their industry are prejudiced in public opinion by runaway prices. I wish to emphasize the public spirited action of these men. They have from fine principle sought to avoid any color of taking advantage of

public necessity to earn extortionate profits. The 70 per cent, or whatever the per cent is, of decent men in the industry are brought into disrepute by the action of 30 per cent, and they are blamed for the independent speculator. I feel confident that a large part of them would welcome some proper price restraint. There are, of course, the inherent difficulties in the constitutional questions that makes effective control of price extremely difficult, because even assuming that this legislation can be made effective there still remains a large field of action that will be required of the State authorities. I am advised that it would be impossible to restrain the price of coal produced for domestic consumption within the boundaries of the State by such action as here provided or any other action that I have yet seen proposed. Likewise it is doubtful whether or not it is possible to restrain speculation and the resale of coal moving in interstate commerce except through the authority of the State governments and, therefore, any action taken requires a large measure of cooperation from the State authorities.

About a month ago, as the situation became more tense, speculation began to grow among dealers in coal and as it was impossible to secure 100 per cent cooperation amongst the coal operators—30 per cent of them obviously profiteering in coal—we sought to extend the purely voluntary measures of restraint by asking the governors of the States if they would not set up some local machinery of their own. That has been done in a great many States. Like the Federal Government, most of them lack any specific legislative authority. They have set up standards as to the price of coal at the mine in some of the producing States and they have set up standards for the charges to be made on the resale and distribution of coal. Most of their organizations are voluntary and they function with a certain degree of failure, as all such organizations must. The prices determined by the State authorities in coal-producing States have been universally somewhat larger than those that were established under the voluntary arrangements that we set up at earlier dates. We used as a basis for arriving at a fair price the last Garfield price scales. Those price scales were determined during the war after exhaustive investigation; they were held in operation for a considerable period and seemed to have protected production and right profit, and we therefore adopted that as the basis, with additions to it, such as would compensate for the very materially increased wage scales and other expenses in different districts. That resulted in fixing a fair maximum price varying from $2.20 to $3.50 in various Southern States then engaged in production. The prices that have been fixed by the State authorities, since they have begun to review the matter, have been pretty generally $1 higher than those that were set up through the Federal agencies. We have felt that the State authorities, with their independent means of investigation for the determination of conditions from day to day, were in a better position to determine these matters than we were here in Washington, and that in any event the primary responsibility for the welfare of the people within their States rested with the State authorities, and therefore their view as to price has been adoped as current. The only point I wish to make on that is that the prices made by the State authorities through the Southern States are about $4.50 for run-of-mine coal; Pennsylvania has $3.75 for thick veins and $4.75 for thin vein coal. I understand prices are under discussion in Ohio that will result in about the same level as Pennsylvania prices for thick and thin vein coal. Those prices, even on that level, would be very materially less than those being charged in trade today.

The CHAIRMAN. If you have nothing more to say the members of the committee, perhaps, would like to ask some questions.

Mr. NEWTON. As I understand it, Mr. Secretary, you feel that the plan embodied in the bill that is before us is about the most effective and expeditious way of handling this coal question?

Secretary HOOVER. Yes, sir. There were, as the result of studies made in the departments as to the constitutional basis for Federal action, two different lines of thought developed. The first of those was to use the various Federal authority as a foundation for the Government taking possession of coal, at a fair price. Taking possession of coal at once means to buy it and if you buy it you must resell it. That logically means that the Government must go into the coal business, to condemn and negotiate for coal at a fair price and resell it.

The difficulties with that plan are very great from the point of view of organization, if from no other point of view, in that to set up machinery of

that kind, which would take care of some percentage of the coal that would create an effective balance wheel on price, would require 60 or 90 days for the very organization and functioning of the organization. The situation is urgent and, therefore, the committee appointed by the President to investigate this matter—which committee consisted of Secretary Fall, the Attorney General, Mr. Aitchison, of the Interstate Commerce Commission, together with myself—concluded that for immediate and urgent use the extension of the powers of the Interstate Commerce Commission would be far and away the most effective. Moreover, the plan provided here keeps the Government out of business and relies upon regulatory powers instead of buying and selling. Of course, it is the hope of all of us that this period may not extend over 90 days, but it may extend over six months, and if we can have some regulatory machinery, as distinguished from some method by which the Government is plunged into business, it will be infinitely more expeditious in its action and it avoids the dreadful pitfalls of the Government going into active business.

Mr. NEWTON. The claim has been made that the maximum prices that would be fixed in different mines and localities would, in effect, become the minimum. What is your judgment on that?

Secretary HOOVER. I do not think there is any question of doubt about that until such a time as the strain is relieved and competitive action began.

Mr. NEWTON. But, assuming that to be the case—and I concede that would be the case—it would be far preferable to the present situation, where the maximum price is whatever the buyer might bid for it, due to the seriousness of his own situation and his ability to pay?

Secretary HOOVER. Yes; and I wish to add that such action is only justified in case of famine. The buyer is, of course, as much responsible as the seller for kiting prices. We have had very fine examples of that during the last three or four weeks. In this time of desperation for coal for the critical services, such as the railways, the public utilities, and the public institutions, the Interstate Commerce Commission established priorities that excluded many consumers. Many desperate buyers in other industries have offered as high as $12 or $15 for coal to operators who were selling coal at $3.50 under their agreements, so that the question of the rise in coal prices is not always to be laid at the door of the seller; it is often a question of the buyer.

The CHAIRMAN. Can you tell us anything about the probable average level of the supply of bituminous coal in the country for miscellaneous and general purposes?

Secretary HOOVER. The railway consumption is approximately 2,000,000 tons a week—perhaps 100,000 tons over that; the strictly public utilities probably use 700,000 tons a week; there is another line of semipublic utilities, like the by-product gas works, who use gas for public purposes and who sell coke, that might embrace another 300,000 or 400,000 tons a week; then there are the public institutions. We have no very definite figure as to their consumption. It might run into 300,000 or 400,000 tons a week, including hospitals, schools, public buildings, etc. Then there follows the industries manufacturing food and other absolute necessities. All together this group, which omits household use and normal industry, probably amounts to 4,000,000 tons a week. Out of a transportation of 8,000,000 or 9,000,000 tons of bituminous per week we should have a margin of five or six million tons a week for industry generally and for household use. With the settlement of the anthracite strike there will be an addition to the supply of from a million and a half to a million and three-quarters tons. This, however, has been taken into account in the estimates of the bituminous shortage.

Mr. MAPES. Do those figures include the entire consumption of coal shipped in interstate commerce?

Secretary HOOVER. No; the total consumption in the country. I wish to say about these figures that we have no real sound analysis of the different descriptions of coal used; we rely upon certain approximations made during the Fuel Administration.

The CHAIRMAN. Can you give any information as to the necessity of shutting down commercial operation in the country due to the lack of coal?

Secretary HOOVER. There has not as yet been any very considerable closing of industry. Some industries like lime kilns, brick works, and industries of that type have in some sections closed down, but as yet there has been no great industrial suspension.

The CHAIRMAN. How imminent is such a situation?

Secretary HOOVER. I would hardly like to answer that question, because with the rapidly accumulating production it may be possible to prevent any major closing of industry.

Mr. COOPER. Mr. Secretary, I just want to ask you one question and it will be a short one. I have listened with a great deal of interest to your statement and as one member of the committee agree with you. You have said that we are facing a very serious situation in our country relative to the coal question, and I believe you stated your observations led you to believe that about 30 per cent of the coal operators were inclined to be profiteers and that about 70 per cent wanted to be fair. Do I understand that this bill will give to the Interstate Commerce Commission the power to say to these 30 per cent of operators who are inclined to profiteer, "If you are going to carry on your business in that way you are not going to have cars?" Is that the purpose of this bill?

Secretary HOOVER. It is, but I do not know that under the provisions of the bill the commission would need to resort to the restriction of production of 30 per cent in order to make it effective. In other words, it is my impression that the penalties under the bill could be applied to a single offense rather than to closing 30 per cent of the mines. Moreover, the offender is as often the dealer as it is the operator. Beyond this the desperate buyer must not be restrained; his bidding adds nothing to the available transportation.

Mr. COOPER. I did not have in mind that it would apply to all of the 30 per cent but would apply to any operator who is inclined to ask extortionate prices for his coal and that where other operators would be inclined to be fair the commission would have the power to furnish them with cars.

Secretary HOOVER. That is the purpose of it.

Mr. GRAHAM. Mr. Secretary, extortionate charging at this time, with the winter coming on and with people in the market bidding against each other, constitutes a burden on interstate commerce, does it not?

Secretary HOOVER. It certainly constitutes a very great burden.

Mr. GRAHAM. And after all is not that the real basis of any action of this kind by Congress?

Secretary HOOVER. Of course that must be the legal basis, but I do not think that prevents us from taking into vision the other consequences of the situation.

Mr. GRAHAM. What I am getting at is that the situation which has arisen with reference to the scarcity of coal is disturbing the better conduct of the commerce of the country in that it sends coal to one place and deprives other places of coal that ought to have it.

Secretary HOOVER. Certainly.

Mr. SANDERS. Mr. Secretary, as I understand the provisions of this bill, they undertake to meet two difficulties that attend the present emergency. One is the question of where coal shall go and the other is the question of the price to be charged for coal. The Interstate Commerce Commission, of course, now has very wide authority with reference to distribution and, together with those who are helping in the emergency, it has been using those powers. I should like to know what additional powers with reference to distribution—leaving out of the question of profiteering and the price charged—it is proposed to give to the Interstate Commerce Commission by this measure.

Secretary HOOVER. I do not think the commission's powers of distribution are extended by the bill materially or that it is necessary to extend them. The power over distribution itself is, I believe, fairly comprehensive in the Interstate Commerce Commission acts, but there is the primary difficulty with distribution under priorities. The commission can set a priority for the movement of coal, but the movement does not take place unless there is a bargain made between the buyer and seller. That problem, for instance, arises in connection with Lake shipments, and before the actual movement of coal into an area of short supply can take place there must be set up some organization of buyers and some organization of sellers who will take advantage of the priorities given to facilitate the movement of the products. This requires, as in the Lake case, some promotive action outside the determination of priorities. There is also the problem of determining the actual shortage of coal and the best market from which it can be obtained, of setting up a series of cooperative measures with State authorities, and so on, all of which it is proposed to set up here by the creation of a Federal Fuel Distributor who will cooperate, in turn with the Interstate Commerce Commission. The powers given the Federal Fuel Distributor are very limited. They practically amount to the determination of facts and the establishment of cooperation. There is thus

the creation of a piece of administrative and executive machinery to supplement the Interstate Commerce Commission in the matter of distribution. The Interstate Commerce Commission does not possess that executive machinery to-day.

Mr. SANDERS. In other words, the Federal Distributor, with his machinery, is authorized under this measure to ascertain in a comprehensive way what the situation is and make recommendations to the Interstate Commerce Commission?

Secretary HOOVER. Yes.

Mr. SANDERS. At the top of page 4, section 5, there is language which gives the Interstate Commerce Commission the power to use "other suitable measures." Do you know what that means? I mean, do you know what the purpose of that language is?

Secretary HOOVER. The purpose, I imagine, was to enable the commission to take care of unexpected emergencies. It is almost impossible to anticipate what may arise out of a shifting situation of this character, and I assume those words were put in in order to put the commission in a position to do everything that can be done.

Mr. SANDERS. You do not recall anything except the question of priority and embargo that is meant to be covered by this language, do you? I was wondering whether by that language it is intended to give the Interstate Commerce Commission the power to do what Doctor Garfield did during the Fuel Administration; that is, stop all the industries of the country for the period of a week.

Secretary HOOVER. No; nothing of that kind has been discussed. As an instance of the use of such powers I might suggest that in dire emergency of further breakdown in transportation that the movement of coal should be zoned so as to secure the most effective use of our transportation. You will realize that there is a great amount of crosshauling in coal and considerable wastage in transportation. That use of zoning was one that was developed during the war with some considerable effect, but it is a very difficult operation and I do not imagine it is in the field at the present moment, but it seems to me that while we are dealing with an emergency there should be wide enough powers to take care of such activities as that.

Mr. SANDERS. As I understand it, the way this is intended to work out is about as follows: "The Federal Fuel Distributor shall ascertain, much in the way that Doctor Garfield did, what he regards as a reasonable price and to cover the entire country so far as coal proposed to be shipped in interstate commerce is concerned; that after ascertaining those prices he shall then make a recommendation to the Interstate Commerce Commission that they shall issue priorities and permit the use of cars only to those persons and corporations who comply in their dealings with the prices so fixed.

Secretary HOOVER. That is approximately the plan, plus the fact that the Federal Fuel Distributer in all those matters will act in cooperation with the State authorities.

Mr. SANDERS. But once he has cooperated and gotten the information the Interstate Commerce Commission may take the prices he fixes as being all right or they may overrule him on the question, because it is only directory, or they may say that the prices fixed by the Federal Fuel Distributer have not proved right and then issue priorities on a different basis.

Secretary HOOVER. Surely.

Mr. SANDERS. But the general purpose of the act is to take the power under the commerce law which controls the priorities of car service, and to say to those who propose to charge a price not in accord with the price fixed by the Fuel Administrator, "We will penalize you for imposing an extortionate price by refusing any cars in which to make shipments"?

Secretary HOOVER. That is not the primary, but probably is the major object of the act. I should not put it higher than major, because the distribution side is very important as setting up executive machinery to enable a more equitable distribution.

Mr. SANDERS. Of course, there is no hearing provided, and there is no chance or opportunity for presenting the side of the operator or the owner of the coal on the question of the price that is fixed. There would be no chance of getting it changed in any way through consideration by any tribunal, as I understand it.

Secretary HOOVER. No; there is no provision here for that, but the fact that the Interstate Commerce Commission itself is a tribunal for the just determination of matters of that sort.

Mr. SANDERS. But the section under which they get their car service powers expressly provides that they may issue their orders without any hearing.

Mr. BARKLEY. Mr. Secretary, I would like to get your views about certain phases of this matter, if you care to express them. My attention has been called to the fact, or the statement has been made in various parts of the country, that public utilities, like street cars, lighting companies, water companies, etc., that serve the public in a municipal way, and also other industries, have been compelled to pay as high as $10 or $12 per ton for run-of-the-mine coal. My attention has been called to a particular location in which it is claimed that public utilities have had to pay that price, and the defense has been made by the operators that they have not charged any such price as that, but that speculators who have been on the ground in the meantime, and who have been filling the hoels to overflowing, have purchased the coal and that they have been responsible for those enormous prices. I would like to have information from you as to the merits of that controversy, as to where the real fault lies with reference to those enormous prices charged for coal.

Secretary HOOVER. I must confess that it is almost impossible to make any quantitative statement as to the relative responsibility. Our calculation is that the amount of coal moved from the nonunion districts under the voluntary agreement which we established indicates that there has been approximately 70 per cent at the price fixed in that arrangement. Certain districts never would comply. Other districts refused for some time to accept the agreement until public pressure became so great that they did so. Still other districts withdrew from or repudiated the agreement. In the main fields of production and among the most responsible operators they held. There is the case of some small percentage of operators, even in the best disciplined districts, who would not comply, and it is very difficult to arrive at a quantitative responsibility. The districts have been infested by coal speculators, and especially the smaller coal operator who had worked his mine intermittently for years at a loss, has felt a great deal of justification for taking what he could get under these circumstances, the favorite justification being that the public showed no concern for the coal operator when he was losing money, and that they did not feel that they were obligated to be concerned for the public when the time came when they could make something over the average. I only mention that as being their view.

One thing certain, and that is that some of the fair-priced coal has gone into the hands of speculators who have misrepresented the price at which they obtained the coal. For instance, in the smokeless fields, the figures will show that less than 5 per cent of the coal out of that field has moved at over the fair price. The average price of coal in the smokeless field has been less than $3.50 per ton right straight through until the agreement was dissolved by the end of the strike. We have had a great many cases reported of smokeless coal being quoted at from $7 to $9 per ton at the mines. That certainly represents considerable misdoing on the part of the persons in possession of the coal, because in very few cases were such prices ever paid. It is very difficult to locate with whom the fault lies.

Mr. BARKLEY. What has been the average price obtained for the 30 per cent of the production that would not enter into the voluntary agreement, or what price have they received over the fair price fixed, or the price received for 70 per cent of the production?

Secretary HOOVER. I do not quite understand that.

Mr. BARKLEY. What has been the excess price charged at the mine for the 30 per cent of the production that would not enter into the agreement over that charged for the 70 per cent sold under the agreement?

Secretary HOOVER. I think it will be very difficult to state. For instance, western Kentucky refused to agree to limits that I felt were fair and, that many of their own operators thought were fair. As a district they stood out for a matter of six weeks. During that time the price of coal at the mines advanced to from $6 to $8 per ton at the mine. Then public pressure and the ascendency of the more decent mined operators, the district agreed on the price of $3.75 per ton. They held to that for a certain lengh of time, and then some of the minor operators began to break away, and the prices went as high as $9 or $10 per ton. At that time the governor, at my request, intervened and recommended the price of $4.50 per ton, and that was adopted and has held for a matter of two weeks. In noncooperating districts and among operators who refused to cooperate prices have ranged lately from $7 to $12 per ton.

Mr. BARKLEY. I do not want to go into the constitutional question, but your view is that under this bill nothing whatever can be done toward the regulation of the price of coal which is mined and consumed wholly within the same State?

Secretary HOOVER. Of course, I do not want to make any pretense at constitutional knowledge, but that is the advice I have received.

Mr. HOCH. Mr. Secretary, the Presidential committee in immediate touch with this question, had under consideration various proposals for legislative action covering the subject of production, supply, distribution, and price: Now, speaking either for yourself, or for that committee, this is the only legislation that you think is necessary or wise to be undertaken in the immediate future?

Secretary HOOVER. I do not want to hesitate to give you a perfectly plain answer one way or the other, but we are faced with a shifting situation of unknown degree of famine. It is impossible to say whether or not these powers will be sufficient. Our idea was this, that the various proposals brought forward, this was the most expeditious and the easiest of application. It looks like it would have success, but if in two months time we found that it was not effective, Congress might wish to consider other measures. From anything I can see it should be effective within the area of Federal action. It creates no interference with decent business and it requires but little executive machinery.

Mr. HOCH. You have spoken of the difficulties, and it certainly would be apparent to anyone, even though he might not have given any considerable thought to it, that the difficulties in building up an organization for buying and for the selling agency that is proposed would be very great. There has also been considerable discussion in the press about the practicability of legislation providing for taking over the mines by the Government direct. Now, you think after all that consideration, that the thing to be immediately done is the enactment of this legislation that is being pressed as affording the most practicable solution of the trouble?

Secretary HOOVER. That is my view.

Mr. HUDDLESTON. Mr. Secretary, is this bill intended to apply to extortion by sales agents and speculators or middlemen?

Secretary HOOVER. Upon the technical question of how far it will apply I would suggest that you should ask the legal advisers. It is my understanding that if a sales agent ships coal in interstate commerce at an extortionate price, he will come within the purview of the bill.

Mr. HUDDLESTON. I have some knowledge of the coal industry, and it is quite common to make a contract for the purchase of the entire output of a mine, or of a certain number of cars. Then it is sold to a sales agent who will make whatever profit he can. Right now the men who made contracts of that kind are making large amounts.

Secretary HOOVER. Yes.

Mr. HUDDLESTON. Do you think that this bill would prevent that kind of extortion?

Secretary HOOVER. The bill was intended to cover such transactions in interstate commerce. As I understand it, it would not cover it if they operated within the domestic limits of the State.

Mr. HUDDLESTON. This measure is not intended to affect mines which are not now producing coal?

Secretary HOOVER. If they should go into production, I presume it would affect them.

Mr. HUDDLESTON. But it is not intended by this measure to put them into production?

Secretary HOOVER. No.

Mr. HUDDLESTON. It does not pretend to affect anthracite production?

Secretary HOOVER. Yes, it would cover anthracite coal just as much as bituminous coal.

Mr. HUDDLESTON. That is, if they should begin operations?

Secretary HOOVER. Yes.

Mr. HUDDLESTON. But, unless there should be some resumption of operations or voluntary resumption of operations, this bill would not cause the production of any anthracite coal?

Secretary HOOVER. No.

Mr. HUDDLESTON. That also applies to the fields or mines in which the strike continues?

Secretary HOOVER. Yes.

Mr. HUDDLESTON. We have seen a good deal in the press about taking over the mines, and I am left in some doubt as to whether such legislation is contemplated. It seems to me that the Senate has some such measure under consideration.

Secretary HOOVER. Such a method of dealing with the strike or distribution has never been recommended by the presidential coal committee or my myself.

Mr. MAPES. Mr. Secretary, I am not quite clear as to whether the voluntary fair price still holds good since the resumption of production by the union miners.

Secretary HOOVER. No; it expires this week. That agreement was entered into for the period of the strike, and after resumption of production by the nonunion mines, it falls of its own weight. In the meantime, the governors of many States have enunciated prices that they consider fair. There is no enforcement machinery of any importance in the States, but the greater percentage of the operators stick to those prices as maximums.

Mr. MAPES. Can you tell us offhand what percentage of the entire coal production is represented by the production of the nonunion mines?

Secretary HOOVER. The nonunion mines at one moment before the railroad strike were producing about 5,500,000 tons per week. Latterly, or for the last four weeks, they have produced in the neighborhood of 4,000,000 tons per week. The limitation on transportation in the southern districts are about the same now as they were before the resumption of production began in the Northern States in the union mines, so I should assume that the southern mines can not be expected to produce much more than 4,000,000 tons per week out of the total of about 7,000,000 tons that we are expecting this week. Production in the Southern States is likely to decrease because the shorter haul in the northern mines may attract cars from them.

Mr. MAPES. The nonunion mines are producing——

Secretary HOOVER (interposing). I did not quite understand. The nonunion mines are producing everything they can with the railroad transportation available.

Mr. MAPES. And if the union mines were producing on the same basis——

Secretary HOOVER (interposing). The total theoretical capacity of the bituminous mines is, perhaps, 14,000,000 tons per week.

Mr. MAPES. That relates solely to the bituminous fields?

Secretary HOOVER. Yes.

Mr. LEA. Can you tell us about what proportion or volume of the coal supply passes through interstate commerce?

Secretary HOOVER. No; I regret that we have not been able to get any comprehensive figures on that question. The whole statistics as to coal movements are very feeble.

Mr. LEA. I understood you to say that the maximum price fixed under this bill would become the minimum price.

Secretary HOOVER. I do not think there is any doubt about that—until there is a surplus of coal.

Mr. LEA. Do you think that would be so if the time should come when the supply would exceed the demand?

Secretary HOOVER. The very minute that there is a surplus supply the price will fall immediately below the maximum. If a fair price were made, it would undoubtedly become the minimum price except in the minor particular of possible truck haulage.

The CHAIRMAN. We have consumed 3 hours and 15 minutes of the 3 hours and 30 minutes allotted to those in favor of the bill. If there are any witnesses present who are opposed to the passage of this bill, they will let it be known by raising their hands. [There was no response.] Will it be agreeable to the committee to permit the chairman to assign some of the time that might have been used by persons in opposition to some persons who would like to be heard in favor of it? Is there any objection to having some of the time given to the negative side consumed by those in favor of the bill? The Chair hears none.

Mr. RAYBURN. There may be some people present who would not want to say that they were opposed to the bill, but who would like to make some suggestions in regard to it.

The CHAIRMAN. We will give them a chance to be heard. Are there any persons present who would like to speak on this bill, and who, perhaps, are not necessarily opposed to it, but who would like to suggest some modification of it?

(There was no response.)

Mr. GRAHAM. What has become of the suggestion to have some representative of the operators here?

The CHAIRMAN. He is here waiting to be heard.

ADDITIONAL STATEMENT OF MR. PATRICK J. FARRELL, CHIEF COUNSEL OF THE INTERSTATE COMMERCE COMMISSION.

Mr. BARKLEY. Mr. Farrell, there are probably more constitutional questions involved in this bill than in any similar bill that has been before this committee in a good while. From reading the bill it seems to be based not only upon the power granted to regulate interstate commerce, but upon the power to provide for the general welfare, to support and maintain an Army and Navy, and upon several others. You, in your testimony, and the other witnesses, seem to have expressed the view that this bill is largely based upon the commerce clause of the Constitution, and the suggestion has been made that the so-called welfare clause is not a grant of any power to Congress. I do not know that you made that statement, but I would like to call your attention to this situation, which bothers me considerably: Under the child-labor decision of the Supreme Court of the United States, or in the two decisions on that subject, the Supreme Court declared the child-labor legislation unconstitutional, one of the grounds being that under the guise of taxation, commerce can not be regulated, and upon the other ground that it was not interstate commerce, and that Congress could not fix the conditions under which the products of a factory or the products of child labor should enter interstate commerce, the production being wholly within one State, the court holding that the fact that such products afterwards went into interstate commerce did not give Congress power to regulate the conditions under which they were produced.

Under those decisions, it may be doubtful whether Congress, under the commerce clause, would have power to fix the price of coal at the mines, although it afterwards enters into interstate commerce. Now, if this legislation is to rely wholly upon the commerce clause, and, following the child-labor decision, the Supreme Court should hold that the sale of coal at the mine is wholly an intrastate transaction, and that the fact that it may enter interstae commerce later will not give Congress or the Federal Government the power to fix the price, then it would follow that this price-fixing provision of the bill, based upon the same clause of the Constitution, would fall. What is your view—assuming it to be correct that the Supreme Court has never defined the welfare clause of the Constitution—of the power of Congress in an emergency of this sort, or in any other nation-wide emergency, to exercise the powers conferred in section 8 of the Constitution, which are to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, to borrow money, regulate commerce, etc., and then gives Congress the power to enact all laws necessary to carry into effect the grant of power contained in section 8?

Mr. FARRELL. The line of demarcation between the things which Congress may and those which it may not control stands right there upon the determination of whether the thing itself affects the subject over which Congress has been given control by the Constitution. Away back in the Knight case, Chief Justice Fuller, delivering the opinion of the Supreme Court, said that the manufacture of sugar, even though the sugar was afterwards shipped in interstate commerce, is not interstate commerce itself, and for that reason can not be controlled under the commerce clause, at least, by the Congress of the United States; but where the thing itself, such as the production of coal, becomes material as an interstate commerce matter, because if it is not produced, interstate commerce can no be moved, and because if it is not produced, the States, other than those in which the production takes place, can not obtain such interstate commerce, the situation is different. It seems to me that under the ruling of the Supreme Court to which reference was made awhile ago, the situation would be different. Now, if Congress legislates, and if the Supreme Court later says that the thing it is endeavoring to regulate does in fact affect either interstate or foreign commerce, it can make all proper rules and regulations regarding it.

Before I finish, however, let me call attention to one thing, which I think is a matter of considerable importance: The Supreme Court of the United States, according to my understanding of its decisions, and I have studied them a good many years, makes a material distinction between the power of Congress to obtain information concerning matters which may not be regulated by

Congress for the purpose of properly regulating those matters with the power of Congress, and the regulation of the things themselves. The court has said that the production of coal as such is not within the power of Congress, because it is in and of itself simply an intrastate matter over which the State in which the coal is produced has exclusive control; but, notwithstanding the fact that Congress may not control the production itself, if I understand correctly the decisions of the Supreme Court, the Congress may authorize an agency to obtain full and complete information concerning the cost of that production and everything else which, under a reasonable construction, would be useful in properly regulating interstate commerce itself.

Mr. BARKLEY. But if Congress can not prevent the flow in interstate commerce of goods that have been made under conditions that Congress has attempted to outlaw, to wit, by the use of child labor, how can Congress prevent the shipment of products of that sort, or any other products, in interstate commerce, because it is claimed that the price is too high?

Mr. FARRELL. I think the distinction that the court makes there is this, that the question of whether a child under a certain age shall be permitted to work is not a matter within the power of Congress. If the Congress should have shown, even at long distance range, so to speak, that if that thing were done—that is to say, if the things were produced in that way, it would be embarrassing to interstate commerce, then, of course, it would have control of it. There are several decisions to the effect that anything which materially affects interstate commerce itself may be controlled by Congress, although taken by itself it would be purely an intrastate matter.

Mr. BARKLEY. What I am getting at is this: If the Supreme Court should take that view of this proposition, or the view that they took in the child labor case, which, I will say, I regret their taking, then this law would have to fall back on the general welfare clause of the Constitution, would it not?

Mr. FARRELL. So far as the general welfare clause of the Constitution is concerned, I do not wish to be understood as expressing any opinion as to the effect it would have on any legislation enacted by Congress, because I am unable to give any opinion. I do not know of any case where any attempt has been made to apply the general welfare clause. I simply contend as a lawyer that in my humble opinion the welfare clause tends to show the purposes that the framers of the Constitution had in view in prescribing certain powers to be exercised by Congress.

Mr. BARKLEY. As has been suggested, the welfare clause is not limited to the preamble, but it is an integral part of a section of the Constitution that confers power. In the absence of any decision holding that the powers under that clause are limited, would you say, as a lawyer, that Congress has power to determine that question and to enact such legislation as will promote the general welfare?

Mr. FARRELL. I would not wish to say that in and of itself it expresses any power, except as it may be used in connection with the power that is in effect definitely granted to show the purpose in granting it. The other powers are specific, and this is a general power.

Mr. BARKLEY. We must assume that it was put in there for some purpose.

Mr. FARRELL. It was put in there to indicate or to serve as a guide in the interpretation of the powers which had been specifically granted.

Mr. BARKLEY. I do not think there is any such limitation upon it.

Mr. FARRELL. That may be. It is a general grant of power.

Mr. GRAHAM. Mr. Farrell, if I am not mistaken in my reading of the stockyards case, the case of Stafford *v.* Wallace, the court in that case comments upon extortionate charges in the stockyards, and the case, to some extent, rests upon the statement that extortionate charges in the stockyards constitute a burden upon interstate commerce and therefore can not be collected.

Mr. FARRELL. I believe that is the real meat in the cocoanut.

Mr. GRAHAM. And in that case the Supreme Court recognizes the right of Congress in certain cases of extortion to have something to say about it?

Mr. FARRELL. Yes, sir; and another distinction you should remember is the distinction between an interference with interstate commerse which benefits one and which burdens the other.

Mr. GRAHAM. That affects the general welfare of the people.

Mr. FARRELL. That would be the same thing in other words.

Mr. DENISON. Then, Mr. Farrell, this official at any time he thought the price charged for wheat was extortionate, could fix the price charged for wheat?

Mr. FARRELL. I would not make a statement of that kind, but if by reason of that extortionate charge, interstate commerce is made impossible, then they go to the root of the evil and apply it to the thing over which Congress has control.

Mr. DENISON. Suppose the price of wheat was so high that it would interfere with the free flow of commerce; then would they have the right?

Mr. FARRELL. It depends upon whether it is a burden upon interstate commerce. Congress, in the first instance, has the right to exercise its judgment in determining the facts.

STATEMENT OF HON. WELLS GOODYKOONTZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA.

Mr. GOODYKOONTZ. Mr. Chairman, I shall only require a few minutes of your time. I appear to express an opinion to the effect that if the proposed measure should be enacted into law it would constitute a clear invasion of the Constitution. I am aware of the fact that no provision of the Constitution has been treated as more elastic than the commerce clause. It has been the subject of judicial construction and interpretation perhaps in 5,000 cases, from the case of Ogden *v.* Gibbons down through the Covington Bridge case, and the very late case relating to child labor. I am aware of the fact that that provision of the Constitution has been interpreted liberally and the court went so far as to hold in the case of the Reed amendment to the agricultural bill that if a man should go across a bridge spanning a river which was a boundary between two States, with half a pint of liquor in his pocket, he was engaging in interstate commerce. The court went so far as to hold that in the case of a man and a woman crossing that bridge for an immoral purpose that they were guilty of an infraction of the law regarding commerce between the States. In other words, I presume the court thought that they were polluting the channels of interstate commerce. But the court has never gone so far as to hold that Congress, under the guise of regulation, might fix the price. If Congress passes this bill it will constitute a new departure in legislation. No decision of the Supreme court can be cited as a precedent to sustain any such legislation.

It seems to me you are going at the wrong end of the business. The mines are ready to produce coal and are producing it. They are equipped with every facility to turn loose a flood of coal and rather had you direct your attention to opening up the channels of commerce so that the coal may be carried to market instead of wasting time abusing the coal people. Instead of doing that, we should direct our attention to the method of transporting the coal and finding a remedy for the strike troubles that exist in the country.

Before I leave the question of the validity of the proposed bill I want to direct your attention to the word "extortion." You say that a bureau or a department of the Government shall have the right to decide what is a fair price or what is extortion. Are you not aware of the fact that the Supreme Court overthrew the penal provisions of the Lever Act upon the ground and for the reason that that act did not particularly define the facts upon which a charge of agreement might be predicated. In my judgment, the bill before you is perfectly useless and utterly worthless. It will accomplish nothing, and I, for one, will be the last to repose any more power in the Interstate Commerce Commission. Had that commission acted promptly in the reduction of freight rates the strikes would never have come. They are the authors of the misfortune of the American people and of this administration. Had they reduced those rates as they should have done, labor would not have been discontented, the cost of living would not have been continually climbing, instead of going down. They were unable to agree upon anything except a mere pittance of a reduction, 10 per cent.

I merely come here now to protest against this bill and to offer, as I have offered, my views for whatever they may be worth.

(Thereupon a recess was taken until 12.30 o'clock p. m.)

AFTER RECESS.

The committee resumed its session at 12.30 p. m., pursuant to the taking of recess.

The CHAIRMAN. The committee will come to order. We will ask Mr. Morrow to give his name and connections and then proceed as he will.

STATEMENT OF MR. JOHN D. A. MORROW, VICE PRESIDENT OF THE NATIONAL COAL ASSOCIATION, WASHINGTON, D. C.

Mr. MORROW. Mr. Chairman and gentlemen, I am J. D. A. Morrow, vice president of the National Coal Association.

I find myself in rather a difficult and embarrassing situation here before this committee, because of the fact that the time which we have had to consider this bill since knowing about it has been so short that it has not been possible to get an opportunity to go over it with many of our directors and committees and representative operators as we would like to have done. So that I have to say to the committee what I will say with the understanding that it may not exactly express the views of our members, because we have not had the opportunity to find out precisely what those views are, but I think we know them fairly well, and what I shall say will, I think, meet with the approval of our members.

Let me say, first, that I think we can all agree with Commissioner Aitchison, and Secretary Hoover that this is not a question of coal production; it is a question of coal movement. While the bituminous mines are not all in operation, many of them are. And of the mines that are in operation—and I speak only for the bituminous mines—those mines have a capacity to produce in excess of 60,000,000 tons a year, more than 5,000,000 tons a month. That ability to produce, however, is predicated upon the ability to move the coal away from the mines. So that practically the difficulty, or problem, or whatever you call it, of the coal situation in the United States in the next few months is essentially a transportation question. It has to be approached, in our view, from that standpoint. It has been approached from that standpoint by the Secretary of Commerce and the administration.

Before this bill is enacted, I think the committee ought to understand clearly what is now being done. There are now in effect certain priority orders of the Interstate Commerce Commission directing the railways to give preference and priority first to the placing of coal cars to the mines, and the movement of the loaded cars away from the mines.

Coal is preferred over all other commodities, under those orders, except foodstuffs for human beings, foodstuffs for live stock, live stock itself, and perishable commodities.

Now, concretely, what does it mean, gentlemen, if those orders are enforced? In 1920 we had a similar situation in transportation, through the instrumentality of the switchmen's strike. The Interstate Commerce Commission made an order under this same priority authority newly given in the Esch-Cummins law. At that time they issued priority orders in favor of coal. Those orders were not strictly enforced when the priority was given, in the summer, and it was not until October that the orders were rigorously enforced; and when they were enforced the production of bituminous coal arose to 13,000,000 tons a week—they had been 500,000 tons a week, but for sometime we ran better than 13,000,000 tons a week, under those priority orders.

Now, gentlemen, under priority orders 22 and 23 in effect, and with the Interstate Commerce Commission having had the experience of 1920 in dealing with this subject, we have already in effect the necessary governmental regulations to move coal, so far as it can be moved by the transportation machine.

Now, before this bill is enacted into law, it seems to me a little consideration ought to be given to the shape transportation is in. What shape is the transportation machine in? I have not had time to look into it in detail, but I have seen the reports of the American Railway Association—the last report, I think of the last week in August, and that report shows that the freight cars loaded and moved in that week were 850,000. In 1920, a boom time, they were 930,000. In other words, these railways now are hauling about 92 per cent as much freight as they did in 1920.

Now, how about coal? In 1920 they were moving 220,000 tons a week. I said a week, I meant a day, in those figures I have given. In this same report they were moving 265,000 cars of coal.

In other words, gentlemen, this transportation machine is now moving about 75,000 cars of freight other than coal in excess of what they did in 1920.

Now, as a practical proposition, to supply this country with coal, we feel the thing to do is to quit moving some of the other freight for a while, and move some more coal. The mining capacity is there. The men are now back at work. The coal is being produced. The operators are anxious to ship the coal, and the country wants it. We have a chance to make up our minds whether we

will haul coal or the other things. We have been hauling the other things. The necessary regulations are in effect to see that the coal is loaded and moved.

Now, I take it that the Interstate Commerce Commission can enforce the orders, and if the Interstate Commerce Commission rigorously enforces orders 22 and 23, other things will not move. Perhaps some of them might as well not move; if this is an emergency, perhaps they might wait awhile.

Now, in the view of these coal men who are on the job and trying to do their job, that is the situation.

Now, the administration tells you it is a price emergency.

Mr. HOCH. Do you mind being interrupted, Mr. Morrow?

Mr. MORROW. Certainly not, Mr. Hoch.

Mr. HOCH. In a general way, what commodities are being moved in cars that are suitable for coal?

Mr. MORROW. A good deal of building material is being moved in cars of that kind. They are taking most of the open top cars. It is not so much a matter of cars, however; it is the motive power. Instead of using it for other stuff, and to move other materials, we think it ought to move coal.

Mr. HOCH. The statement was that there were 75,000 cars of freight being used for materials other than coal.

Mr. MORROW. The answer is that we do not have the locomotives to move the other materials and the coal. The question is what transportation is to be used for the transportation of coal. Our answer to the problam is to use it for coal for awhile and the country will get all the coal that it will need.

And the feeling that needs to be allayed is the feeling of any panic on the part of the consumers. If the consumers, and particularly the larger consumers, the larger buyers of coal are to feel that the movement of coal will be interferred with, a lot of them will go out into the market and pay any price for a sufficient quantity of coal to stock up for the winter. On the other hand, if they are reasonably sure that they can get current shipments of coal, sufficient for their current needs, and that they can have shipments of coal when they need it, they will not pay fancy prices for coal. The manufacturer, and the buyers of coal are sane and conservative business men.

But when the manufacturers of typewriters, for instance, are willing to go out into the market and pay $20 per ton for coal, as they have done, it will create a panicy condition. And when the coal men remonstrated with the buyer, he said, "It doesn't make any difference to me; it is only a few cents more per machine, and I will put a price on the coal so that I can keep running." If he had been assured that he could get coal at $5 a ton, he would not have bid more than $5 a ton.

And if the orders are to be enforced, I think coal will move, and the panic is going to go to pieces. The price is already down.

Now, to come back to this matter of price control. Our industry is necessarily disturbed. If any such far-reaching legislation is enacted as the control over prices, it is a radical departure, as we see it. If any such departure is to be entered upon, I think our people will feel that it should be done only after full consideration. It is not a matter that should be entered upon hastily.

Let us take the bill itself. Here is created a fuel agency. Through that agency some declaration is to be made as to what prices are fair and reasonable, and then through priority orders the Interstate Commerce Commission is to enforce those decisions.

Now, note what you are doing. Your enforcement provision, upon which you rely in this bill is the identical one that the Interstate Commerce Commission has now in effect, service order 23. To be sure, you apply it a little differently, but essentially it is the same thing.

Now, gentlemen, if that authority, if that administrative agency is competent to enforce that price control through its orders and embargoes, and so on, then it is competent to enforce service order No. 23. If it does enforce service order 23, you will get your coal.

Mr. MAPES. Order 23 can be enforced if there is a 100 per cent car supply.

Mr. MORROW. If there is a 100 per cent car supply it does not need to be enforced.

Mr. MAPES. Was it enforced in 1920?

Mr. MORROW. It was, I understand.

Commissioner AITCHISON. May I interrupt you there, Mr. Morrow?

Mr. MORROW. Certainly, Mr. Aitchison.

Commissioner AITCHISON. Several times you said "if they enforce order 23." Do you mean to leave the impression with the committee that the order has not been enforced?

Mr. MORROW. No; if I have given any such impression, I have not meant to do it. The word "enforce," perhaps, should not have been used. I meant if it was applied rigorously; if it was rigorously applied and carried out.

Commissioner AITCHISON. Do you mean to say that it was not rigorously applied?

Mr. MORROW. No, sir; there is no criticism of the commission intended.

Commissioner AITCHISON. Or of the carriers?

Mr. MORROW. No, sir. The situation is this, that the mines were shut down, and the coal was not coming out. Most of the mines were shut down. But now, when we have the opportunity to ship more than 2,000 cars a week, if the commission goes ahead and lets these orders work out there will be a leveling program, and that is what will happen if they enforce it. That is what I mean. It isn't any criticism of what has been done. But, looking ahead, with the possible production of coal what you can make it, it is a question whether you can move it or not. But if you let the orders work out, then you will move coal.

Now, Mr. Chairman and gentlemen, a further word about——

Mr. GRAHAM (interposing). Mr. Chairman, the record, I believe, does not contain the service order 23, and I would like to have that order inserted in the record.

Mr. MAPES. And order 22 also.

Mr. MORROW. I can state the substance of them, I think.

The CHAIRMAN. You understand, Mr. Graham, the committee desires to have this hearing printed by to-morrow, and in order to accomplish that it will be necessary to have it at the printing office before 7 o'clock, and the shorter it is the better.

Mr. GRAHAM. The trouble in getting it out is in the typewriting, and if he already has it in typewritten form it can be inserted.

The CHAIRMAN. No; it is a question of getting it into the hands of the printer, and getting it set up.

Mr. MORROW. Mr. Aitchison is here, and he could probably state it better than I can. The difficulty is that the service order I have here now has been somewhat modified, and Mr. Aitchison could tell you briefly what it covers.

Mr. GRAHAM. I think, in view of that statement, that if it is not desired to put it in the record, one of these gentlemen should state the substance of it.

The CHAIRMAN. Mr. Morrow has suggested that Mr. Aitchison could state the substance of it, and without objection we will permit Mr. Aitchison to state the substance of the orders.

STATEMENT OF HON. CLYDE B. AITCHISON, INTERSTATE COMMERCE COMMISSIONER, WASHINGTON, D. C.

Mr. AITCHISON. Mr. Chairman, I will cut off as much as possible, although the order itself is very succinct.

We require carriers, when currently unable to transport all freight which is offered to them, to give preference and priority to the movement of food for human consumption, feed for live stock, live stock, perishable products, coal, coke, and fuel oil.

Now, this order applies east of the Mississippi River.

Secondly, there is a provision for the return of empty cars, and preference and priority in the movement of empty cars intended to be used for the transportation of the commodities mentioned in paragraph 1 are to be given to that class of equipment in preference to other kinds of equipment.

And, third, we provide that coal-carrying roads, when they are unable to supply cars in full for all uses, shall give preferential handling to cars for coal loading, and the return of coal cars.

Fourth, a provision is made for the delivery of coal cars, as defined, by the noncoal-carrying road to the coal-carrying road, up to the ability of the one to deliver and the other to receive cars for that purpose.

Fifth, that all common carriers are directed to discontinue the use of cars suitable for the loading and transportation of coal for other commodities, so long as it is necessary to use such cars for coal use.

Sixth, there are certain embargo conditions against consignees who do not promptly unload.

Seventh, that is a direction for the priority and placement as between mines. That, as has been stated by Mr. Morrow, has been modified by an amendment, and I will give it simply as it now stands.

Class 1 is reserved for the use of the commission from time to time, and that is what Mr. Secretary Hoover referred to this morning as class 1 priorities.

Class 2 covers (*a*) fuel for railroad and other common carriers and for bunkering ships and vessels; (*b*) for public utilities which directly serve the general public under a franchise therefor, with street and interurban railways, electric power and light, gas, water, and sewer works, ice plants which directly serve the public generally with ice, or supply refrigeration for use in foodstuffs; hospitals; (*c*) for the United States, State, county, or municipal governments, and for their hospitals, schools, and for their other public institutions—all to the end that such common carriers, public utilities, quasi-public utilities, and governments may be kept supplied with coal for current use for such purposes, but not for storage, exchange, or sale; (*d*) bituminous coal which has passed over screen 4 inches or larger openings, coke, and anthracite coal to be shipped to retail dealers for household use.

It is not intended to give any priority as between *a*, *b*, *c*, and *d*.

Mr. BARKLEY. Will you explain again what class 1 is? I did not get it clearly.

Mr. AITCHISON. That is what is reserved for the special designation by the commission.

Mr. BARKLEY. Class 1 leaves them open for control by the commission?

Mr. AITCHISON. To leave a number open so that we can put a priority above others we are specifically abolishing.

Mr. MAPES. Allocate them to class 1?

Mr. AITCHISON. The class will be there, and, as to allocating, the allocating will be done to districts under our direction.

And then class 3 applies to coal-carrying roads which reach mines in Pennsylvania, Ohio, West Virginia, Kentucky, Tennessee, and Alabama, for bituminous coal consigned to any Lake Erie port for transshipment by water to ports upon Lake Superior.

And class 4 is coal for the production and manufacture of foodstuffs and medicines and for the manufacture of containers therefor, for daily use but not for storage, exchange, or sale.

And class 5 is for all other purposes.

The remainder of the order is formal, simply suspends all existing practices and rules of the carriers in effect, and provides the time when the order shall go into effect.

Mr. HOCH. Are there any priorities west of the Mississippi River?

Mr. AITCHISON. No; by service order 22 the carriers were empowered and directed, whenever necessary to avoid congestion and expedite shipment, to disregard the routing specified by the shipper and forward by direct route, protecting the shipper in the matter of rates. That applies all over the country and is intended to prevent congestions at terminals.

STATEMENT OF MR. JOHN D. A. MORROW—Resumed.

Mr. MORROW. Gentleman, you appreciate from what Commissioner Aitchison has said, that the necessary basis has been laid for the shipment of the necessary supply of coal to the consumers. And I want you to notice especially that in the priority order, under class 2, your railways, your public utilities, your hospitals, your ice plants, and your domestic consumers have been provided for, so far as coal passes over a 4-inch screen will satisfy the need, and whenever coal for the domestic consumer is necessary, it ought to be included in that priority class.

Now, the effect on the consumer should be also noted. So long as there is a limited car supply, these orders operate very effectively in fixing the price of coal. If you gentlemen were all mine operators, and there were not enough cars distributed among your mines, and the Interstate Commerce Commission agreed to furnish coal cars to those who would ship it to the domestic users, or to some other of the priority users enumerated here, you would have the privilege of running. The buyer understands that too. The buyer will not offer you the top price. The buyers in 1920 did not offer the top price. They paid several dollars below the top price, knowing that the operators would take it in order to run their mines.

Mr. NEWTON. Mr. Morrow, how long has that order been in effect?

Mr. MORROW. I think since the 16th of July. The trouble is, there was a limited amount coming out. Now that the mines are running, and the coal is moving, and the empties are coming back, you will get a much better movement of coal.

Now, if there will be 13,000,000 tons a week, the situation will take care of itself. And if for household purposes, to the retailers, or some other buyers, who must have coal—if there is danger that they are to be held up, your remedy is there, to put that in the hands of the agents of the Interstate Commerce Commission to say to these railroads that these men should get the priority order, the operator will take a steady running time as against broken time. It is better business; it gives him a better business organization, and it is preferable to do that every time. It is preferable in the coal industry.

Now, that is the situation as we see it, briefly. This is the situation: Simply that there is in effect the necessary machinery to deal with this situation. It is now in effect, and, therefore, we do not see any necessity of jamming through panic legislation of this kind in a few hours' time. We feel that there ought to be very careful consideration before it is done, and we ought to see how these orders of the Interstate Commerce Commission work out when we have these mines all in operation.

Let me say that I think the bituminous coal operators have given ample demonstration of their willingness to cooperate with the administration. They are doing it now, and they will continue to do it. They want this country supplied with coal. And while there will be speculative people—people who will speculate in coal, and there will be some few individuals who will profit by it, the industry as a whole will not profit by it. We believe that it will develop labor troubles, and these gentlemen all see it. But, gentlemen, they see also the change in governmental policy that it is proposed to embark upon.

Mr. GRAHAM. Now, Mr. Morrow, what is that?

Mr. MORROW. The fixing of prices and the enforcing of those prices, as proposed in this bill.

Mr. GRAHAM. Where do you get that in this bill?

Mr. MORROW. Various of the gentlemen who have appeared here before me have stated that, and have stated where they get it.

Mr. GRAHAM. That may be, but where do you get it?

Mr. MORROW. I get it from section 3. The Fuel Distributor shall state the prices normally charged for coal and other fuel and whether current prices, considering the cost of production and distribution, are just and reasonable.

Now, we find further down here that the Interstate Commerce Commission is directed to receive and consider the recommendations of the Fuel Distributor, and in its discretion to issue such order for priorities in car service, embargoes, and other measures in favor of or against any carrier or region, or to take any necessary steps for priority to enforce that—if that is not intended——

Mr. SANDERS (interposing). Read on down; read line 7.

Mr. MORROW. Yes; to prevent extortion in prices for coal and fuel.

Mr. GRAHAM. To prevent extortion in prices charged for coal, and to promote the general welfare.

Mr. MORROW. To shut down the mines of the men who won't sell.

Mr. GRAHAM. Not necessarily.

Mr. MORROW. What else would it be?

Mr. GRAHAM. They could limit his cars, if the extortion is such as to limit interstate commerce. But what further is there?

Mr. MORROW. That is enough. If we can't ship our coal, we can't store it.

Mr. GRAHAM. If the extortion is a burden on interstate commerce, ought there not to be some way to control it?

Mr. MORROW. The answer to that is this: The way to handle it is to see that the buyer gets the coal. That will end it immediately. The sufficiency of supply is the answer to that. Instead of embargo or the enforcement of a price in detail, the sufficiency of a supply is the answer. There are 20,000 dealers in coal now, but if this bill goes into effect there will be 120,000 bootleggers of coal, and you will have to regulate them, too.

Mr. GRAHAM. Tell us how that will happen.

Mr. MORROW. Why are they in business now under the Volstead Act? It will make it worth while for somebody to get it.

Mr. GRAHAM. Are they doing it now?

Mr. MORROW. Yes, sir.

Mr. GRAHAM. Why are they, when order 23 is in effect?

Mr. MORROW. Because we have not got the production yet.

Mr. GRAHAM. And you think if we get production next week that will stop that; they will quit doing it?

Mr. MORROW. No; I don't think they will next week.

Mr. GRAHAM. When will they quit?

Mr. MORROW. When order 7920, I believe, when it was enforced in 1920, the price of coal was somewhere around $8 or $9 a ton at the mines. About the 1st of December it went to about $4 and by the 1st of January it was down to $3. As soon as the buyer feels that he can get the coal, he will quit it.

Mr. BARKLEY. Mr. Chairman, may I ask the witness a question?

The CHAIRMAN. Are you through, Mr. Graham?

Mr. GRAHAM. Yes; I yield to the gentleman.

Mr. BARKLEY. Mr. Morrow, Secretary Hoover stated that in order to catch up with the normal supply of coal, on account of the shortage, it would require 12,000,000 or 13,000,000 tons a week for 20 weeks, and there was only transportation facilities now for 9,000,000 or 10,000,000 tons. Do you dispute that statement of his?

Mr. MORROW. I do not wish to dispute any statement Secetary Hoover has made.

Mr. BARKLEY. I do not mean to use the word "dispute" in an offensive sense. Do you disagree with him?

Mr. MORROW. Yes; I think I would disagree with him. The fact remains that these roads have transportation service which is handling 850,000 cars of revenue freight.

Mr. BARKLEY. I do not know that we deal so much in the number of cars as in the amount of coal hauled in a week. What are they hauling now in tons?

Mr. MORROW. In tons—I will have to translate that into tons. Last week they handled from three to six million tons.

Mr. BARKLEY. How much more can they handle with their present facilities?

Mr. MORROW. With those facilities, 10,000,000 or 11,000,000 tons a week.

Mr. BARKLEY. Do you think they could do that with those facilities?

Mr. MORROW. Yes; they surely could; they are handling 850,000 cars.

Mr. BARKLEY. But not in coal cars?

Mr. MORROW. No, sir; not in coal cars.

Mr. Aitchison suggests that I refer to the situation on the coal-carrying roads. I have not all the statistics at hand that I would like to have to talk to the committee, as I have said. Some of those roads are in a difficult situation. The B. & O. is and the C. & O. also. That is a condition that we have to recognize, and the thing we have to do on those roads is to devote as much as possible on those roads to the job of carrying coal. How rapidly they can get out of their difficulties I do not know. But this committee ought to know before it enacts this legislation. That is precisely why I say it should not be rushed through.

Mr. BARKLEY. Are you able to say that the statement is reasonably correct that it would take a production of 14 million or 15 million tons a week for four or five months to catch up with the normal supply, due to the strike?

Mr. MORROW. That is a difficult question to answer because the answer will be quite different, depending on whether the anthracite mines will be in operation, or not.

Mr. BARKLEY. I am assuming they will not be in operation.

Mr. MORROW. If they are not in operation, Mr. Hoover's statement is exactly right.

Mr. BARKLEY. I think he stated there had been a loss of 35,000,000 tons due to the anthracite mines shutdown which can not be recovered.

Mr. MORROW. Yes; that is true; but if the anthracite mines start production, they will produce 2,000,000 tons a week, and that will greatly relieve the bituminous production.

Now, I want to make this clear: One other thing would be necessary to avoid a panicy coal market, and that would be the assurance to the buyer of coal that the Administration would see to it that the coal was going to be moved throughout the winter. That is, they would keep their priority orders in effect, and additional priority orders during the winter.

Mr. BARKLEY. You think that the only thing that is necessary is to carry out service order 22 and priority order 23—both service orders 22 and 23—without any additional legislation?

Mr. MORROW. I don't think at the present time there is any need of additional legislation.

Mr. BARKLEY. Do you take into consideration that transportation has considerably broken down?

Mr. MORROW. Yes; and it was in 1920.

Mr. BARKLEY. It was in 1920, but not for the same reason and not to the same extent.

Mr. MORROW. That may be true.

Mr. BARKLEY. Do you know what percentage of the coal shortage now is due to the shopmen's strike?

Mr. MORROW. No; but not a great deal of the coal-carrying equipment is affected, because I think most of the difficulty there, Mr. Barkley, is a matter of locomotives. It is not a matter of cars. I don't think it is a shortage of cars. It is a question of motive power, and that is why I said a while ago we can produce if we can move the coal. And I think the committee ought to recognize that. If they undertake to move some other commodities, there will be some of them that will not be moved until this matter gets straightened out.

Mr. BARKLEY. There is considerable interruption because of bad order cars.

Mr. MORROW. Yes; I think that is true. Commissioner Aitchison can correct me if I am wrong, but I think the limiting factor now is locomotives, rather than cars; is that true, Mr. Aitchison?

Commissioner AITCHISON. I think that is true. I think that is the situation.

Mr. BARKLEY. Suppose we take this situation: That this strike is not settled in time, and that this situation as to cars and engines becomes worse. And let us assume that by reason of that it is impossible to supply the country with its normal supply of coal, and by reason of that failure to supply that amount of coal which is needed there is a buyer's panic, and 30 per cent of the buyers are unwilling to enter into any agreement as to prices—I am putting the worst phase on it—do you assume that Congress is not justified in undertaking to enact any legislation?

Mr. MORROW. Let me take that a little further. Let us assume that service order 23 is in effect, and let us take two buyers. Who will be the men that will be coming in? Will they be the hospitals and the utilities? None of them. They are all taken care of under order 23. The men who come in then are the men who are running the silk mills and the factories, and he can well afford to pay that price that the Underwood Typewriter paid in 1920. He doesn't need any protection from Congress. He can pay that price. But if that preference remains in effect the other users will be getting their coal at a reasonable level. On the other hand, that will not apply if there is a full supply of cars, because the man will say, There is no preference to me, and we will all get coal. If you have a full supply of cars, there will be such a production that it will not be necessary to enforce these orders. That is the long and short of it. As long as you have a car supply you will have sufficient production. If we have a car supply decrease to such an extent that you do not have the output of coal, then you will have such a demand that the price will go up. That is what happened in 1920.

Mr. BARKLEY. Now, if any considerable portion of the coal production is sold at these speculative prices, will that not necessarily react on the prices paid by consumers to fill their private bins, and all these other consumers of coal?

Mr. MORROW. Now, that would be a matter of the retail distribution of coal, and I can not speak of that, but at any rate I think we will have to reach that in some other way. Wouldn't that be under the State authorities?

Mr. BARKLEY. Maybe. We get information from all sorts of directions and all sources.

Mr. MORROW. You do?

Mr. BARKLEY. I have received information from certain sources that speculators who are not consumers of coal, buy it in order to sell it to the consumers of coal, and they rush in to the coal fields and are bidding there almost like they would at an auction for coal, one man outbidding another. My information may not be correct. Do you know whether that has been done?

Mr. MORROW. I think probably that is true.

Mr. BARKLEY. So in both cases it would not be the Underwood typewriter factory, or the Ford automobile factory, or a silk mill, but some middleman who comes in to inflate prices?

Mr. MORROW. Just go a step further. Who is your speculator going to sell that to?

Mr. BARKLEY. He is going to sell it to anybody that he can make a profit out of.

Mr. MORROW. All right. Now, one step further. Put yourself in the shoes of the speculator. He goes to the public utility. Can he sell to those public utilities at a fancy price? Why, no; the public utility man can get his supply under this order.

Mr. BARKLEY. But if the public utilities can not get it through this machinery, they will pay it.

Mr. MORROW. Some of the public utilities will not. I think some of them did pay it, and Mr. Hoover and Mr. Spencer and the administration had to ask them to get out of the market and buy under this order, and in this manner.

Mr. BARKLEY. The situation may have changed in the last week.

Mr. MORROW. I think the situation you have there is representative of what goes on. If there is a short crop of cotton this fall, you will have a speculative price on cotton from men who hope to unload on somebody else. We can not help that. These men will sell, and men will buy. But if you priority orders are in effect, the distribution will be limited, and it will take care of prices. You do not need anybody to take care of it. But there were men who sent their buyers into the coal districts with a checkbook, and their only instructions were that they should keep them running, and they were fired the day they quit running. The public utilities, and the railways, and the private consumers need protection against these buyers. You have got it right there now, and it can be applied. Therefore, I feel that most of what this bill hopes to do is now being done. It is not being done by application to the particular operator, or particular mine, or particular consumer; it is being done generally. But it is being done just the same.

Mr. COOPER. Mr. Morrow, I think I heard you say that the coal-carrying roads should devote their facilities to the carrying of coal. What about the industries——

Mr. MORROW. (interposing). If we do not have enough coal to supply households, they will have to shut down anyway.

Mr. COOPER. And many industries in my district are out of coal and have shut down. Now, if they got coal, it would not do any good if they could not ship their products.

Mr. MORROW. Well, that is true. But most of our industries would not—well, they would be affected by it, too; they would have to be affected.

Mr. COOPER. Did I understand you a moment ago that some of these manufacturers could afford to pay $20 a ton for coal?

Mr. MORROW. They did do it, and made contracts for a year. But that was not this year; that was in 1920.

Mr. COOPER. What effect will that have on the household coal?

Mr. MORROW. Mr. Cooper, the retail dealer, if he can get it under priority from the operator, the retail dealer is not going to have to bid against this typewriter concern, or these factories. He will get it direct, and at a very reasonable figure, and if the retail dealer undertakes to tell his customers that he had to pay $20 a ton for his coal and distribute it on that basis, the local authorities will have to deal with him.

Mr. COOPER. One more question: The Secretary of Commerce stated that they were paying 20 per cent over the price of coal. What objection have you to checking those men?

Mr. MORROW. Not a bit.

Mr. COOPER. Don't you check them under this bill?

Mr. MORROW. That is exactly what you do under the service order; not under this bill.

Mr. COOPER. The representative of the Interstate Commerce Commission did not say that this morning.

Mr. MORROW. Maybe he did not. That is a question then of constitutional authority, because the Interstate Commerce Commission has levied embargoes against shippers under the Esch-Cummings law. If they did it then legally, I do not see why they can not do it now legally.

Mr. LEA. I do not understand your position, Mr. Morrow, with reference to priorities being a protection against excessive prices. Suppose that we have the operation of the priority that is now in effect, what is to prevent the coal producers from selling to the highest bidder and refusing to sell for priority purposes?

Mr. MORROW. If he refuses to sell for the priority purposes, as long as you haven't a sufficient number of cars, he can't sell to anybody. He won't have the coal to ship. Do you get that?

Mr. LEA. Yes.

Mr. MORROW. That is the predicament he is put in. The priority buyer gets in with the first supply of cars. As long as there are not enough cars to go around the man will have to take his choice with the first priority orders. The necessity is to get enough orders to run at all. That is the way it worked before.

Mr. LEA. The man who does get the priority can get the higher prices, if he waits for the priority?

Mr. MORROW. You mean the buyer of the coal?

Mr. LEA. The seller; if he simply refuses to sell at the lower price, he can get the higher price. Why should a man sacrifice at a lower price when by holding on he can get a higher price?

Mr. MORROW. Mr. Lea, you will have to presuppose, before that condition can arise, an understanding between the operators that they will not——

Commissioner AITCHISON (interposing). That is exactly what happened in Alabama.

Mr. MORROW. I believe the statement was that there the price of $2.50 a ton was not a fair price.

Commissioner AITCHISON. Their statement was that they were not interested in the price, and stayed out.

Mr. LEA. Your statement is that when there is a sufficient supply of cars the operators will run off the coal and sell at the low price?

Mr. MORROW. When a man's mine has been shut down for four or five months and he has an overhead expense of $30,000 or $40,000 in his mine—and that is the situation in these union fields—and you increase your car supply, and there is a prospect of a steady increase in the car supply, and you will find plenty of individuals who will take priority orders. And they will probably take advantage of the situation to make long-term leases or contracts at those prices. That is the way they will work it

Mr. NEWTON. Mr. Morrow, your statement is all based upon the premise that there is a sufficient car supply to fill all the wants that will be filed under these various priorities; that is correct, is it not?

Mr. MORROW. I don't know just what you mean by that

Mr. NEWTON. Well, if there is a sufficiently available car supply so that any person, who is entitled to a priority, may expect to get a car and place it at the mine and have the order filled?

Mr. MORROW. Yes, sir.

Mr. NEWTON. Well, it is my understanding that that is not the situation; that at least for some little time there is an insufficient car supply to even take care of those immediate needs of the industries and the utilities which are entitled to a priority.

Mr. MORROW. Where did you get that impresson?

Mr. NEWTON. I get that impression from the Interstate Commerce Commission and from my own knowledge of the facts of the people in Minnesota who want coal and who can not get it.

Mr. MORROW. Now, let us differentiate a little. Is it the lack of car supply or the lack of——

Mr. NEWTON (interposing). Well, car supply or motive power.

Mr. MORROW (continuing). Or is it congested yards and crippled motive power; which is it?

Mr. NEWTON. Well, it is something pertaining to the movement of the freight—either insufficient locomotives or cars in a locality.

Mr. MORROW. All right.

Mr. NEWTON. Now, if that is the understanding and the situation and there is and will be for some time to come an insufficient supply of motive power or cars to move the coal, then there is going to be competition among the buyers for priority shipments, is there not?

Mr. MORROW. Yes, sir.

Mr. NEWTON. And the moment you have competition among the buyers for priority shipments then you are going to have the sellers boosting their prices, just as they have been doing in the past few years.

Mr. MORROW. No, Mr. Newton; the difficulty with your reasoning is, the business that these priority orders cover, as Secretary Hoover told you this morning, does not begin to absorb all the classes of coal that must move. These priority classes, Mr. Hoover said, do not require more than 4,000,000 or 5,000,000 tons a week. Personally, I think it is about 6,000,000.

Mr. NEWTON. You are not moving that much now.

Mr. MORROW. Three and a half million this week.

Mr. NEWTON. Then why is it that the great transcontinental roads in my country, in order to get coal—they have only got six or eight days' supply—have had to go to the dockmen and pay their prices?

Mr. MORROW. Most of the roads have mines along their lines, but they have been shut down by the strike, but which are now running. They have started to run, but the agreements have just been signed, and they have not reached their production. It is perfectly true that they were shut down, but they are now running. I may be wrong, but the coal operators told me that these plains roads are in pretty fair shape, better than the eastern roads.

Mr. NEWTON. I do not know about the eastern roads, but I know that the northwestern roads are in bad shape.

Mr. MORROW. I know that the railroads bought coal for less than the dock companies could buy it for later. It showed that they had better judgment than the dock companies, that is all.

Mr. NEWTON. There are members of the committee who know cases where coal was purchased last spring at $2 or $3 a ton, and probably less than that, and is now being sold at $8 or $9.

Mr. MORROW. That is probably true.

Mr. NEWTON. Now, the majority, or what I think is the majority element of the operators, say they do not want to exact these charges, but they are at the mercy of the minority, and that is probably true.

Mr. MORROW. They are not exacting the prices.

Mr. NEWTON. And unless something is done, people have simply got to pay the same toll that they paid two years ago, when representative coal men appeared before the Calder committee of the Senate and testified that the toll exacted out of the public by reason of the conditions two or three years ago, took from $200,000,000 to $500,000,000 additional money out of the pockets of the public. I do not want to see that repeated.

Mr. MORROW. Mr. Newton, the cure for that, which was urged upon the Interstate Commerce Commission jointly by the operators and the National Coal Association, was the enforcement of their order which was not rigorously enforced until late September or October, and that was exactly the same situation as you have here.

Commissioner AITCHISON. I challenge that statement.

Mr. MORROW. Is that not true?

Commissioner AITCHISON. No, sir. Service order No. 7 was more drastic than these orders, and every step that was taken after that was taken in favor of more rigorous enforcement.

Mr. MORROW. Let me ask you this question: Didn't you make a lot of exceptions in favor of a less rigorous enforcement of the order?

Commissioner AITCHISON. It was a mere bagatelle. We kept releasing out the 36-inch cars and then the 42-inch cars, and we kept releasing them right along.

Mr. MORROW. The fact remains that when that order was put into effect the production of coal was around 8,000,000 or 9,000,000 tons a week, and no matter how that order was enforced, it went up to 13,000,000 tons. Now, if they got that after the relaxed order, the committee can draw its own conclusion whether that had anything to do with it. The point I am making is that I am at a very great disadvantage because I have not had the opportunity of going in detail into these figures before appearing before the committee. And if I have made any error in stating figures, it has been unintentional.

The CHAIRMAN. Mr. Morrow, is there any feature of this bill that has not been gone over with you privately and publicly in the last two or three weeks?

Mr. MORROW. Yes, sir.

The CHAIRMAN. If there is, will you point it out?

Mr. MORROW. Section 3, the creation of the Federal Fuel Distributor. The remainder of the bill, I don't think there would be much objection to.

The CHAIRMAN. That may be, in form, new, but it can not be a surprise. All the essentials of these clauses have been talked over and discussed by man, woman, and child.

Mr. MORROW. I have not talked of it.

The CHAIRMAN. This section 3, not in that particular shape, but there is nothing there that we have not been talking over at home and every place else; every business man and the chambers of commerce have been talking over what it was proposed to do.

Mr. MORROW. Possibly they have, but I have not been in on any of those discussions.

The CHAIRMAN. Then it is a shock to you?

Mr. MORROW. The proposal of the President to Congress was for the creation of a coal-purchasing agency.

The CHAIRMAN. Yes.

Mr. MORROW. Now, it was not until the introduction of this bill by Senator Cummins that I knew any other arrangement was contemplated.

The CHAIRMAN. That may be true, but the essence of this thing has been floating around, and it can not come to you, as the greatest expert in coal——

Mr. MORROW (interposing). I am not the greatest expert on coal, Mr. Chairman.

The CHAIRMAN. It can not come to you as a surprise, the fundamentals of the thing.

Mr. MORROW. So far as the fundamentals go, I am perfectly willing to talk fundamentals with you. That is what I am doing. But section 3, I think, marks a distinct innovation. The rest of it is, I think, not objectionable. I do not see any harm in giving the Interstate Commerce Commission the authority.

The CHAIRMAN. I do not take any exception to a discussion of the fundamentals, but I do take exception that this bill has been forced on you so suddenly that it stuns your mental facilities.

Mr. MORROW. I did not mean to say that, Mr. Winslow.

Mr. SANDERS. What you mean to say is that you have been called within the last 48 hours with reference to this matter?

Mr. MORROW. Yes; Mr. Winslow called me late on Saturday night with reference to this bill.

The CHAIRMAN. By the same token, we were all called out of bed to attend this matter.

Mr. MORROW. Yes; I believe you have been.

Mr. NEWTON. Your association takes in 45 or 50 per cent of the operators?

Mr. MORROW. Of the tonnage, not the operators.

Mr. NEWTON. Of the tonnage?

Mr. MORROW. Of the tonnage.

Mr. NEWTON. What action has your association taken in order to prevent this profiteering in this necessity of life?

Mr. MORROW. Well, our association has not taken any particular action at this time, except that some of our local associations have cooperated with the Secretary of Commerce, as he told you, and with the Interstate Commerce Commission. That was not entirely a national coal association matter, because all the union fields were shut down. It was a matter of arranging between the fields, that is, the nonunion fields, and that was arranged by the local associations. In 1920 we did cooperate with the Interstate Commerce Commission, and the only method by which we could cooperate was simply in the increase in production. We could cooperate in any way to obtain increases in production; we could cooperate to obtain better distribution of coal, but we could not do anything with respect to prices.

Mr. NEWTON. Not the maximum prices?

Mr. MORROW. No, sir; not for any purpose at all. Our counsel advised us if we took any concerted action we were liable to indictment.

Mr. NEWTON. I don't know who your counsel was, or anything of the kind, but I think that is a leaning over backward in an interpretation of the Sherman Act that you could not get together and agree to charge the public not more than a certain figure.

Mr. MORROW. If the chairman will pardon me, I will give you a bit of my personal experience to show what the situation was. As a matter of fact, our representatives did sit down with Mr. Aitchison, and with General Atterbury, and Mr. Willard to see if we could not devise some way to get coal to New England, not dealing in the matter of price at all, and I am under indictment right now for sitting in a room with those gentlemen, to see whether we could not get coal up there. I would be in jail now if we had said anything about the prices.

Mr. SANDERS. And they have been indicted in Indiana because they checked off the United Mine Workers, did they not?

Mr. MORROW. Yes, sir.

Mr. LEA. There is one more question I would like to ask about priorities. Assuming that under the present arrangements the demand for priorities were supplied, assuming that the demand for priority coal was fully supplied, from that time on until a completed demand was supplied, what plan would there

be to protect the public from coal going to the highest bidder on the auction block?

Mr. MORROW. There would not be any. That is, the part of the public that can afford to pay $20 a ton for coal, or any other price.

Mr. LEA. The hospitals——

Mr. MORROW (interposing). No, sir; they are covered in this order, as I understand it.

Mr. LEA. It would include the commercial organizations, and business concerns?

Mr. MORROW. Some of them.

Mr. LEA. As long as they paid the higher prices the others are forced to pay it.

Mr. MORROW. The whole question is sufficiency of supply. The coal is elastic in demand. They do not buy more than they need. You buy what you need, and you do not keep it around. Now, unless we get a sufficient amount or supply of coal, you are going to have industries or somebody doing without it. That is simply going to happen because you have to have a certain tonnage to take care of the demand. On the other hand, if they do have enough to take care of the demand, and there is assurance that there will be enough to take care of the demand you will never have any trouble about prices.

Mr. LEA. But until you do get enough you are going to have trouble with the prices.

Mr. MORROW. You are.

Mr. SANDERS. And if we pass this measure you will still have the trouble?

Mr. MORROW. You will still have to have prices.

Mr. DENISON. Mr. Morrow, I get an entirely different view of this bill from your view, and I want to see whether I understand you. You say you object to section 3. That provides for the duties of the Fuel Distributor. He has no power to fix prices of coal or anything else, excepting looking around and getting information and making certain recommendations to the Interstate Commerce Commission. Now, the purpose of that is simply to aid the Interstate Commerce Commission to do what this bill is trying to do. The whole purpose of this bill is to give the Interstate Commerce Commission power to control the price of coal in interstate commerce. All this Fuel Distributor can do is to make recommendations. And the Fuel Distributor provided for in section 3 is simply an auxiliary officer to furnish the Interstate Commerce Commission with recommendations upon which the Interstate Commerce Commission can go ahead to do what the Interstate Commerce Commission is directed to do. The duties of that officer are to aid the Interstate Commerce Commission to do, as I say, what the bill is trying to do. Now, it seems to me if your only objection is to section 3, then there is not very much opposition to this bill.

Mr. MORROW. I think you have called my attention to a correction that I ought to make, Mr. Denison.

Mr. DENISON. Let me go ahead a little further. Section 5 goes ahead, and is the substance of this whole bill. That gives the Interstate Commerce Commission power, after it has gotten this information from whatever sources it wants to, but particularly through the distributor, it gives the commission the power to say what the price of coal may be, or at least what it may not be, and if any person undertakes to charge a higher price than that, it gives them the power to place an embargo on that shipment at once. They do not have that power now, do they?

Mr. MORROW. No; they do not, Mr. Denison, and I ought to say that so far as this bill would attempt to give the Interstate Commerce Commission that specific power to fix and enforce prices for coal, I think our people would be opposed to it. I think that is a fair statement. So far as any additional authority may be needed by the Interstate Commerce Commission to insure an absolutely adequate amount of coal to take care of the needs of the country, we are with you. That will take care of the prices. But we do not want the Interstate Commerce Commission, or any other agency of the Government, to engage in fixing or enforcing prices for coal. We want you to set up, or help the Interstate Commerce Commission to set up, conditions of production and distribution which will take care of your price problem in a normal and natural way. That is all we ask. We are willing to go along with you on that, and will support a bill for that purpose. I think the Interstate Commission has all the authority it needs for that purpose. The industry does not have any sympathy with these speculators. We feel that it can be done by insuring a sufficiency of coal movement, and it does not engage the Government in this dangerous control of

private enterprise, and it seems to me that our people would be satisfied with this bill in that shape. I think that would be their position. I am sorry I did not have time to canvass them fully on the question, but because of the limited time I could not do it. Nevertheless, I am sure I am stating the position of most of them when I say that.

Mr. DENISON. I simply want to make this observation, that if this bill does not give the Interstate Commerce Commission the power to fix the price of coal that is sold in interstate commerce then the bill does not accomplish anything the committee wants to accomplish, and by fixing the price I mean fixing a price above which they can not sell.

Mr. MORROW. I understand what you mean.

Mr. DENISON. If it does not do that then there is nothing to the bill so far as I understand it; but is it not your understanding that section 5 does do that thing?

Mr. MORROW. It certainly does; it would seem to; at any rate, I take it from the language you called my attention to that that is your expectation of what they will do. You have a better idea of precisely what is intended by the bill than I have. If the Interstate Commerce Commission can exercise that power with respect to coal, would it not be possible for it to exercise the same power with respect to all other commodities that move in interstate commerce?

Mr. DENISON. It would if Congress should give them that power.

Mr. NEWTON. That is, basic commodities. You must modify it to that extent.

Mr. MORROW. I do not remember seeing the word "basic" in the Constitution of the United States.

Mr. GRAHAM. You do not see the word "coal" there, do you?

Mr. MORROW. No. You seem to feel it would apply only to the basic commodities, and I take it that that would include such things as food products, shelter, and so on.

Mr. NEWTON. I have no doubt but that if there should be a condition arise in agriculture, for example, so that wheat could not be moved and it appeared the people would starve unless it moved, that Congress would have the same jurisdiction as to wheat that we claim it has as to coal.

Mr. COOPER. Mr. Morrow, may I ask you this question? Do you not believe that for some time to come the great manufacturers will buy all the coal they can possibly get in order to replenish their stocks?

Mr. MORROW. Mr. Cooper, that will depend very largely——

Mr. COOPER (interposing). You know they will, do you not?

Mr. MORROW. No; I do not.

Mr. COOPER. They will just grab every car they can get.

Mr. MORROW. I do not think they will. I have talked with the purchasing agents of some large concerns—and some in your country—and their feeling about it is this: That if they think they are not going to get coal this winter they want to go out to these mines and get every car right away they can get, but if they are satisfied they can get coal they do not want to go out and pay these prices for it. That is the attitude of these purchasing agents who represent the larger companies, and I think that is about the fair size of it.

Mr. COOPER. Do you not think that if we had a coal distributor he would give the operators a fair price?

Mr. MORROW. I do not doubt that for a minute.

Mr. COOPER. Then what objection is there to trying to stop a few profiteers who have gotten into the business?

Mr. MORROW. We do not object to that, but we certainly do not like the way you are trying to do it. That is the difficulty.

Mr. COOPER. Say I am a coal operator and I am charging a big price for my coal; you are another coal operator and you are asking a fair price. It seems to me you ought to be entitled to those cars to move your coal in preference to me, and that is all this bill does. Why should not that be done? Tell me why you should not be entitled to those care to move your coal.

Mr. MORROW. Well, I do not want to argue with you about this, and it is difficult for me to state the views of a lot of men I have not had a chance to talk with.

Mr. COOPER. When I speak I have in mind the general public.

Mr. MORROW. And I am thinking of the general public, too. I want to make clear that these operators want the general public taken care of with coal; they will go along on any proposition to get coal to them, but they object when it comes to putting the life and death of the business in the hands of the Interstate Commerce Commission, and that is exactly what this does.

Mr. COOPER. But you have the life and death of the American people to consider.

Mr. MORROW. That is a question of mining and moving the coal primarily, is it not? If there is not coal enough produced in West Virginia, in the Pittsburgh district of Pennsylvania, and eastern Ohio to supply your industries with coal your plants are going to be shut down no matter whether the price of coal is $1 a ton or $100; if that is the condition they are going to be down anyhow. You have got to get coal produced and everything that is necessary as far as business in this country is concerned—that is, everything that is necessary for its operation. It is a matter of tonnage with respect to coal. The operation of the factories is not going to depend on the price for the coal. If an adequate supply is not furnished some of them will not run. Some of them might not run because the price of it was too high. Mr. Ford does not intend to run for that reason. Maybe that is not the only reason, but that is the reason he gives, yet Mr. Ford owns his own mines and produces his own coal.

Mr. MAPES. Does not he give as the reason that he is not allowed to ship any coal by the Interstate Commerce Commission or is not given any preference for the purpose of running his factory and not because of the price?

Mr. MORROW. Then I take it Mr. Ford would not like the provisions of this bill, especially if it is intended to extend the powers of the Interstate Commerce Commission to control the movement of coal.

Mr. MAPES. I do not know what his views are in connection with this bill but that was the idea I gathered from his statement.

Mr. BARKLEY. Under the present law I believe the Interstate Commerce Commission has no power to discriminate against any coal operator because he is profiteering in the way of car service—is not that true?

Mr. MORROW. I think that is right.

Mr. BARKLEY. I appreciate the embarrassment under which you labor in not having had a chance to confer with all those you represent, but you do not want to leave the impression on this committee that the coal operators of the United States believe that the coal operator who is profiteering ought to be given the same advantage in car service as the operator who is charging a fair price, do you?

Mr. MORROW. That is a hard question to answer. If it was on that single ground alone, merely because there was a difference in price, I think the operators would not want him to be denied the use of cars; if it were on that ground alone I think they would feel that way about it, although they might be out of sympathy with what he was doing and would be willing and ready to condemn him in unmeasured terms. However, they would feel that that was too dangerous, and that it was a too far-reaching, extensive and unnecessary use of power, and that the way to get at that situation is another way.

Mr. BARKLEY. What is that other way?

Mr. MORROW. As I said before, take his market away from him; in other words, instead of trying to prevent him from charging an unfair price for the coal, do not give him an opportunity. I think that is the view they will take of it.

Mr. BARKLEY. That looks like a sugar-coated remedy where a more drastic one may be needed. I know a lot of coal operators in this country personally, and I know a great majority of them are fair-minded men and want to serve the public with a reasonable profit, but it is inconceivable to me that that class of coal operators believe that the unfair man ought to have the same advantage to abuse the public that they want to serve the public in the matter of coal.

Mr. MORROW. Many of them feel very deeply about that and they would want something done to get after this fellow who is charging an unreasonable price, and, as I say, they condemn him in unmeasured terms, yet I am satisfied, if you had this particular proposition up, that most of those operators would be afraid of it and that they would say, "No; we do not believe you had better try to reach him in that way under ordinary conditions." I may be wrong about that but that is my impression of it.

Mr. GRAHAM. You represent the National Coal Association?

Mr. MORROW. Yes, sir.

Mr. GRAHAM. Is that the association which recently contested the right of the Federal Trade Commission to prosecute some inquiries about the coal industry?

Mr. MORROW. Yes, sir.

Mr. GRAHAM. It is the same association that appeared in the so-called Vandalia case in Indiana?

Mr. MORROW. Yes, sir.

Mr. RAYBURN. Mr. Morrow, is not this about your situation: That you do not want to see a few desperadoes around who may be operators, or may be anybody else, trying to hold up and fleece the public, but is not the proposition which controls them one thing and the possibility of a maze of socialistic legislation, and especially this sort of legislation, another thing, and that those other things you are afraid of?

Mr. MORROW. I think you hav stated it far better than I could. I think a lot of our operators would feel as you have stated it.

Mr. RAYBURN. Is it not one thing to have people who have business and other people who do not have business but have some ideas as to what the Government is instituted for and who are insisting on what ought to be done with reference to business, and another thing to go outside of anything which they think is a proper governmental function and to confer extreme powers which may be invoked in time of war but not in time of peace?

Mr. MORROW. Yes, sir.

Mr. RAYBURN. I think that would be a fair statement to make as to business men or other people who do not wish, in the hysteria of the moment, to be pushed into legislation of this character.

Mr. DENISON. This thought has occurred to me in connection with your statement: If the policy is right to deny a man the use of commerce because he is charging a price which some commission thinks is extortionate—if that is the right and correct principle to apply to Government then it would follow that the cheaper a man sells his coal the more cars the Government ought to furnish him and that the Government ought to start on the policy of furnishing cars to coal dealers in proportion to the price they charge. That is the logic of it and that is where it leads.

Mr. MORROW. If the Government, as a matter of public policy, wants to insure a minimum cost of bituminous coal permanently all it needs to do it to keep the mines full of cars and see that the coal is moved; then you will have the coal at the cost of production and it will come from the most efficiently operated mines all the time. That is the only way you could get at it.

Mr. HOCH. I want to get some information with reference to the value of the operation of the priority now in effect: I understood you to say that there was no preference in providing for the various subdivisions of class 2.

Mr. MORROW. I think that is right.

Mr. HOCH. As a practical matter is there not in effect a preference, and does the buyer for domestic use have much chance to get coal?

Mr. MORROW. Mr. Hoch, that would depend probably on the connection of the retail dealer with the operating companies.

Mr. HOCH. I am talking about the actual situation. From the practical standpoint, is there not a preference existing among the several subdivisions of class 2?

Mr. MORROW. That would be true as to the retail dealer, but it would not necessarily be true very long, because your selling agent, wholesaler, and the other men who are looking for a market for coal, in disposing of their lump coal, particularly at this season of the year, would be hunting up the retail dealer and getting him to take it as the normal outlet for it.

Mr. HOCH. I understood from reading the priority orders that there is no preference provided for as among the subdivisions of class 2?

Mr. MORROW. One of my difficulties, and it is one of the difficulties of the trade, is to differentiate between the conditions during the past six or eight weeks with respect to the quantity of coal that was produced, and that which will be produced, or between that which has been produced and that which is now being produced and will be produced. We have had all this country here, from Pittsburgh west, with very small exceptions, not producing any coal at all. The tonnage had to be hauled for a long distance, and extreme measures had to be taken to supply the railroads. Now those men will be back at work, and there will be, of course, a very material increase in the production of coal. There was a time when the railroads took lump coal or anything else that they could get. There is another thing: Mr. Aitchison calls my attention to the fact that it was only on the 4th of August that this domestic coal handled by retail dealers was put in the same priority with this other coal, and you probably heard some complaint about the condition before that time, when it was in a lower priority.

Mr. HOCH. The statement was commonly made that the railroads grabbed all the coal that they could get, or as soon as it was available, but there was

nothing in the priorities order that would permit them to do that ahead of the users of domestic coal.

Mr. MORROW. Now, the people most urgently in need of coal in the United States to-day, or at any place in the United States, are those consumers who are dependent upon shipments on the Great Lakes. Some such priority as we had in 1920, or as the commission may now have in effect, will have to be enforced in order to see that coal goes up there to keep the people from freezing to death in the Northwest. That will possibly require the arbitrary exercise of power by the commission in getting the coal up there. That arbitrary exercise of power is necessary, and it should be observed. I think that our association would support the commission in it, as we did in 1920, when we were threatened with lawsuits, injunctions, and everything else.

Mr. HOCH. I was not raising that question as to the wisdom or necessity of making that provision, but I was discussing the practical effect of the priority orders with reference to those different classes mentioned in class 2.

Mr. MORROW. The practical effect of the priority is that the buyer in the priority class not only has a real advantage in getting his coal, and he has a real one alright, but he also has a real dvantage in bargaining for that coal in the market. He will have that as long as there is an emergency and a shortage in the supply of cars. As soon as the supply of cars disappears, that advantage will also disappear, but when that happens, you will have a production of coal in such volume that it will not make any difference if it does disappear.

Mr. SANDERS. In considering this question, both with regard to the question of increasing production because of the shortage of coal, and the other question of preventing profiteering, whenever a law is passed that controls the price of coal, will not that have the effect of deterring production to a certain extent?

Mr. MORROW. That would depend, of course, upon the price named for the coal. It might be that it would have that effect.

Mr. SANDERS. The price is not named in the bill, but that is under the control of the Fuel Administrator, who may be overruled by the Interstate Commerce Commission, and who may be changed at any time. What would be the effect of that on getting out a lot of coal immediately?

Mr. MORROW. Well, the effect that you would normally expect would be that it would be a deterrent to production. I would not want to say that, because that presupposes that the coal distributor, or the commission, would not take into account the fact that you might need to stimulate production, and they might make a price with that purpose in mind.

Mr. SANDERS. They might do it, but, as a matter of fact, the Fuel Administrator before fixed a price for certain coal in Indiana at a dollar per ton less than the cost of producing it. Being faced with that penalty, they stopped mining for three or four weeks before we could finally convince the Federal Fuel Administrator that the price fixed was less than the cost of producing the coal. In addition to that, there were many wagon mines that were stopped because the price happened to be fixed too low for them. Of course it was not done purposely, but the point I am making is that in setting up machinery under the law to prescribe that the price shall be so much would have a tendency to deter production.

Mr. MORROW. That is true. Besides that I have not said anything to the committee here, because I did not wish to take up their time unnecessarily about the practical difficulties. I have not attempted to enlarge upon the practical difficulties that the coal consumers will encounter under one fixed price for coal. There is a vast difference in the quality of coal and desirability of coal. Those differences are normally reflected in gradations of price. If you have these prices set up very near together, you will have the practical difficulties that will arise on that single thing, because that is different in the ordinary market, with the fluctuations up and down. For instance, to-day you want steam coal, and that is bought, and to-morrow you want domestic coal. If you have a single price for the coal, it deteriorates the quality of the coal, because there is no longer any incentive to provide the best quality of coal. They will say, "You had as well load it up with dirt." That is the attitude of many operators. Other operators during the war looked forward to a period of stiff competition afterwards, and did their best to maintain their standards of quality, but others did not do that. You will have all of the economic difficulties of artificially controlled price, as you know. I do not wish to take up your time by enlarging upon that.

Mr. SANDERS. If we should fix the price of coal, it might for a period of three or four weeks prevent an unconscionable price, but from that time on the prices would be lower, because of competition, and as soon as production is increased that will naturally tend to cut down the prices?

Mr. MORROW. Yes, sir.

Mr. SANDERS. Whereas if you have a maximum price it always becomes the minimum?

Mr. MORROW. It will until production gets up to a certain point.

The CHAIRMAN. Several of the committee have asked that Mr. Aitchison be recalled to rebut in a sense certain contentions which Mr. Morrow has set forth, and if there is no objection we will call on him now.

ADDITIONAL STATEMENT OF MR. CLYDE B. AITCHISON.

Mr. AITCHISON. Mr. Chairman, it is perfectly idle for us to talk about any 13,000,000 tons of coal being produced, or about our being able to protect the coal market price within this period of emergency that this legislation is intended to meet, because of the simple fact that the condition of the carriers, as it is known to every human being who has had occasion to keep in touch with it, is such that if the shopmen's strike were settled to-morrow, and if all questions of seniority were to be waived, it would require the utmost endeavors of all who could be put to work to get the equipment into shape to handle the fall business which is now upon us. In saying that, I am simply quoting what has been said by the executives and by the representatives of the shopmen all along in the public press during the last few weeks. A production of 13,000,000 tons has been reached very infrequently in the history of this country. We were talking about the bituminous coal, and a few moments ago I challenged Mr. Morrow's statement, or dissented from it mildly, that we had not reached a production of 13,000,000 tons in 1920. It transpired that he was talking about bituminous coal, and I was incorrect in that regard and he was correct. I was talking about all coal, including anthracite, and I was correct there. We can not figure upon their being able to reach a production of 13,000,000 tons, or any such production as that for the next few weeks, and that is the amount which all parties seem to concede to be necessary in order to bring about this beneficent regulation of price by the law of supply and demand, and we had as well disregard that.

At the present time we are utilizing every open-top car that has sides on it 36 inches high, if equipped with racks, in handling coal. If it is equipped with racks, it is handling coal. Within the next few weeks, or within a very short time, we will have to have 90,000 cars at least for handling the sugar-beet business. We had to do that in 1920, and as we went along, we released that number of cars for sugar beets. Only the other day, we heard representatives of the Associated General Contractors of America, which claims to represent 11,000,000 workmen, whom they say are being put out or will be put out of employment if service order No. 23 is continued literally in force. The matter has not been passed upon, but they contend with great force and much logic that when it comes to handling coal for the industries, coal is a raw material just the same as limestone or ore for pig iron, and the like. They contend that they have patriotically remained quiet up to the present time. It is estimated that hundreds of millions of dollars loss has been sustained by the people of the country who are engaged in the construction business, and they have borne that loss uncomplainingly up to the present time. Now, with the production of coal coming back as it is, we must meet the situation which Mr. Morrow has pointed out, and say that we are going to take cars away permanently for the remainder of this year from construction of all kinds—that is, from the transportation of bricks, and from the handling of the products made in the Youngstown and Pittsburgh districts, and from steel and everything else that goes into building construction.

In order to do that, they must all be forgotten for the rest of the year, and all that equipment must be devoted to coal, or else we will have this condition to continue. It is a grave responsibility to put upon the commission to protect the price of coal by taking away transportation from other industries that are perfectly lawful and which, so far as I know, have never been accused of profiteering in this country.

Now, just one other suggestion: The suggestion has been made that with proper transportation, the situation will immediately cure itself. That suggestion is based upon the fact that we handled so many hundred thousand loaded

cars recently, and that so many hundred thousand cars were transported on lines of the coal carriers of the country. That includes, however, transportation in freight cars of carriers that have nothing to do with the production of coal, and mighty little to do with the distribution of coal. Figures more to the point would be those to show to what extent it would be possible to handle coal, especially on the coal-loading carriers. On that I think I can speak with some degree of positiveness, and I do not see how that tonnage can be increased except by a speedy settlement of the shopmen's strike.

Mr. HUDDLESTON. Are not those coal-loading carriers operating practically at full capacity at the present time?

Mr. AITCHISON. The Louisville & Nashville Railroad, in eastern Kentucky, has broken its record for all time, so far as that is concerned. It has done that over a tortuous mountain road in eastern Kentucky, over which they were transporting 180 per cent of the greatest amount they ever transported before. It is that sort of thing that we are called upon to increase by devoting all of our attention to the transportation of coal.

Mr. MORROW. Will you tell the committee how much they are now transporting? They are not transporting 180 per cent now.

Mr. AITCHISON. No; but sabotage is now going on on the lines of the Louisville & Nashville. For instance, you can go to Corbin, and if you will go out into the yards, and look at the journal boxes of locomotives you will find sand in them. That is what they are facing. Now, if this condition is to be overcome, and if we are to be able to protect the market by producing coal, we must get around that sort of thing. If we are unable to do that, and I see no solution of it, the alternative is that we must frankly recognize the fact that for the immediate future there is absolutely nothing in this talk of our being able by the law of supply and demand to keep the price of coal down.

We are coming into the hard season of the year. During the summer season we have been able to do more than we are going to be able to do now. Are you going to stop work in connection with wheat, the products of the orchard, everything perishable in character and devote your attention to coal? What is there about coal that is more sacred than other things? We have given preference and priority to coal along with other things essential to human life. But the thought that we are going to devote our attention primarily to the transportation of coal to keep the prices within reason is a new one.

I have one further thought in that regard, and I am going to call attention to the fact that in 1920, at a time when we went through travail like this, it is a singular paradox that when the production of coal was increased the price mounted until it broke, because industry failed.

As administrative officers, we have not any pride about this proposition. As members of the presidential committee, we have come to you with statements as to what our troubles are, as to the conditions prevailing in the country, and the responsibility must ultimately rest upon the law-making body.

The suggestion has been made that the commission has the power to regulate the distribution of cars so that each section can have a fair share of the coal to be distributed.

Let us look at the act with regard to that proposition. I want to say in fairness to the honored chairman of the commission, Commissioner McChord, that he does not agree with me on this. He has the idea, and I think it is shared by Commissioner Lewis and Commissioner Cox that the word "emergency" is broad enough to cover anything that may occur to us as being detrimental to the condition of the country. I think no other member of the commission nor its chief counsel has voiced any such views, and it was not the policy administered by the commission in its last endeavors to handle the car situation two years ago.

The act says, in paragraph 15, section 1: "Whenever the commission is of opinion that shortage of equipment, congestion of traffic or other emergency requiring immediate action exists in any section of the country, the commission shall have," and so on.

Now, those of us who have taken legal advice with respect to the meaning of these words "or other emergency" are, first of all, face to face with the familiar proposition that the words "or other" when used in connection with the precise words in the statute immediately preceding means or other of the same general character, unless the contrary appears clearly from the context of the act. Let us see what the context is. "The commission is given authority, first, to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by

the commission." Please bear in mind that by paragraph 12 Congress has laid down a rule which, taken by itself, is seemingly comprehensive as to equal distribution of cars among the mines. So there is nothing here which gives us jurisdiction except to suspend the operation of the rules and manifestly a suspension of them will not do the trick. The act continues, "(b) To make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people." This is the language which Commissioner McChord seizes upon, "during such emergency as in its opinion will best promote"—what?—"the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon."

First, this subdivision only relates to the common use of equipment; second, it provides that the commission may do that which is necessary to promote the service. Obviously, this word "service" is intended, and what is intended by Congress here is to say. "You may do this if it is necessary so that the maximum transportation service is afforded." There is nothing about the interest of the public or the commerce of the public except as it relates to the service of the carrier, to make it of a more adequate character to promote the interest of the public and the commerce of the people.

"(c) To require such joint or common use of terminals, including main-line tracks or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest. (d) To give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them."

If there is anything in that to give the commission authority to say that the State of Minnesota must have 15,000,000 tons of coal, except that we are able to tie it down to the betterment of the service, it has not been pointed out. So we have been able to justify every service order by saying that what we have done is calculated to increase the sum total of transportation service given by the carriers of the country.

Mr. DENISON. I want to ask you about your priority order. Does that order give priority to individuals for the use of coal in their homes?

Mr. AITCHISON. Not particular individuals; they are described as a class.

Mr. DENISON. For home purposes?

Mr. AITCHISON. They are in class 2 in respect to coal which has passed through a screen; they are in class 4 as to all other domestic coal—that is, bituminous coal.

Mr. DENISON. So that coal needed for domestic use is, as a matter of fact, under the commission's order, given some priority; is that right?

Mr. AITCHISON. If it has passed over a 4-inch screen and is to be shipped to retail dealers for household use. It has become a priority class, coequal with others in that class.

Mr. SANDERS. Paragraph 15 gives the commission, when this emergency exists, power to give preference or priority in transportation movement to traffic under permit at such times and for such periods as it may determine. That is a separate subdivision—subdivision (d).

Mr. AITCHISON. That is correct.

Mr. SANDERS. The limitation is in the other subdivision, where it says, "whenever the commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country."

Mr. AITCHISON. Yes.

Mr. SANDERS. Do you mean to say that under that you have the authority to issue priority orders to carry coal into any section of the country?

Mr. AITCHISON. We have now jurisdiction to issue necessary priority orders to obviate any transportation condition which may exist, but it must be a matter of service which we are to overcome.

Mr. SANDERS. Are you not doing it under this order? What more can you do, so far as distribution is concerned, than this order does?

Mr. AITCHISON. I wish to say that we must not in the feature of price lose sight of what the Secretary of Commerce pointed out, and that is the very important element of distribution referred to in this bill. The two are, perhaps, not equally important, the bill primarily being directed to the question

of price, but the distribution machinery is unquestionably essential both from the administrative standpoint and because of the hiatus in the existing law.

Mr. SANDERS. That is a question of creating machinery to get the accurate information to the commission. I am talking about the powers of the commission after it gets the requisite information. Do you have any additional power?

Mr. AITCHISON. Yes; we have. We have power to make such orders; we are authorized "to receive and consider the said recommendations of the Federal Fuel Distributor and in its discretion to issue such order or orders for priorities in car service, embargoes, and other suitable measues in favor of or against any carrier or region, municipality, community, person, copartnership or corporation, and to take any other necessary or appropriate steps for priority in car service and in equitable distribution of coal or other fuel," speaking from the sociological point of view rather than that of transportation.

Mr. SANDERS. Is that in connection with the price charged?

Mr. AITCHISON. That is one question to be taken into consideration. But let us see what the fuel distributor is obliged to take into account. In section 3 is says, "It shall be the duty of the Federal Fuel Distributer to ascertain (*a*) the available supply of coal and whether there exists within the United States or in any part thereof a shortage or impending shortage of coal or other fuel and the extent of such shortage; (*b*) the fields of production of coal and other fuel and the principal markets to which such production is or may be transported and distributed and the means and methods of distribution thereat."

Mr. SANDERS. That is information they are getting with reference to where the orders ought to operate. But once they get that information and give it to you, do you need any additional authority other than you have given you by the interstate commerce act, and if so, what?

Mr. AITCHISON. To control distribution. I have never heard that the anthracite roads have been troubled by inadequate service at all. Their service has been practically 100 per cent. Under the existing law, I take it in a case of that sort there is nothing for us to function on with respect to.

But when the fuel distributer says so much anthracite coal should go to New York, so much to the Great Lakes, and the like, then we are authorized by the new act to consider that and to take the necessary steps to see that it is done. That is somewhat analogous to the powers which the President exercised in time of war. If you will turn again to section 15, on page 14 of the commission's reprint, you will find it is provided that, "in time of war or threatened war the President may certify to the commission that it is essential to the national defense and security that certain traffic shall have preference or priority in transportation, and the commission shall, under the power herein conferred, direct that such preference or priority be affoded." It is analogous to that power.

Mr. SANDERS. That is the sentence which says that the President may direct the commission to do it, and that was put in there because the other gives the commission its discretion.

Mr. AITCHISON. Yes.

Mr. SANDERS. There is nothing in this bill that compels the commission to act. But what I can not find—and I am anxious to find it, because I am willing to give the commission any authority necessary with reference to distribution; if there is anything in it—and I think there may be—that gives the commission additional power with reference to distribution, not connected with price, I would go right along with you. I am with you so far as fuel distribution is concerned; I think that is necessary. I am with you along that line and want to give you any authority you have not got with reference to giving the commission absolute power in the interest of the public in time of emergency to send cars anywhere they want to send them.

Mr. AITCHISON. If I am correct in my understanding of what Congress was attempting to do by the Esch Act of 1917, which is section 402 of the transportation act, you were attempting to give us the means of dealing with transportation emergencies, but you were not attempting to tell the commission to take necessary and preferred steps looking toward the equitable distribution of coal and other fuel so as best to meet the emergency and promote the general welfare.

Mr. SANDERS. I understand that you have the power now to arbitrarily shut off the coal cars upon the sole question of the price charged by the operators. But if there is any other power you have, what is it? I should like to know what is meant by the words "and other suitable measures" on page 4, line 1?

Mr. AITCHISON. I think I can give you a very suitable answer to that. A permit as distinguished from an embargo means that the permit is an exception from the embargo. It evidently was the thought of Congress that the manner or technique of handling these priorities being carried out by the commission was to vest in the commission a little latitude as to how to do it. It might be a standing rule of the commission.

Mr. SANDERS. You would be willing to have that changed from "service, embargoes," etc., to "permit," would you not?

Mr. AITCHISON. No. I do not think you ought to permit our doing the thing by rote. It is a procedure or method intended to be governed by some discretion left in the commission as to how that can be accomplished. That is to say, to cover a situation that none of us can foresee as to how we will carry out legislation of this general character.

Mr. SANDERS. I fancy that if the Interstate Commerce Commission is given power "that they are hereby empowered and directed to take such suitable measures as may be necessary," that everybody would be against it, and what I am after is to find out what is the meaning of this language.

Mr. AITCHISON. Again I have to appeal to the statutory manner of construction. I take it that it means other appropriate means looking to the carrying out of the intent which has been previously expressed.

Mr. SANDERS. One of those intents is to cut down the price. It does not give the Interstate Commerce Commission power to cut down prices and fix them, does it?

Mr. AITCHISON. That is all covered by what precedes in the act.

Mr. SANDERS. I did not want to question you about that, but I thought perhaps you had something specific in mind by the use of that term.

Mr. AITCHISON. It was a general catch-all phrase which was intended to take any effective procedure or method to accomplish the purpose of the act.

Mr. HOCH. I want to get in my mind just what is the function of this Federal distributor. There seems to be some idea that he has something to do with the distribution of fuel, and Secretary Hoover referred to some necessity for some Federal machinery to help make effective the priority orders under this bill. Turning, however, to section 3, which sets out the duties of the Federal distributer, I do not find anything there that contemplates he shall do anything with reference to the distribution of coal except to get some facts and furnish them to the Interstate Commerce Commission.

Mr. AITCHISON. Have you overlooked section 7?

Mr. HOCH. I was just coming to that. Section 7 says he shall make such rules and orders as may be necessary to carry out the provisions of this act. The provisions of this act have not only to do with the duty of the distributor himself but also with the duties of the Interstate Commerce Commission. Is that language intended to mean that he shall have something to do with carrying out the duties of the Interstate Commerce Commission?

Mr. AITCHISON. Clearly not.

Mr. HOCH. That is the language of it. Assume that we shall amend the bill to make that clear, what are those other duties? That we may be clear, what are his duties aside from those that are set out in section 3?

Mr. AITCHISON. They are broad, of course, but he is to furnish under paragraph 1 to the commission, upon request, information which we deem necessary.

Mr. NEWTON. Let me call your attention to line 18 of page 4 concerning cooperation with the different State agencies, etc.

Mr. HOCH. How cooperate? I want to know what his duties are when he comes to cooperate.

Mr. AITCHISON. Well, with the decentralization of cooperation and vesting the powers in the State governors obviously the local authorities are hardly in position to find the man he is willing to sell to, and his functions, I take it, will be very much like those he now exercises. That is, to get buyer and seller together.

Mr. HOCH. The only function he performs is to get where the buyer is.

Mr. AITCHISON. He gets function through the State.

Mr. HOCH. And he gets information where they can act through the Interstate Commerce Commission?

Mr. AITCHISON. You must bear in mind that you are only thinking of the mandatory part, and for everything it will be necessary to use the mandatory power there will be many times, I trust, when he will be able to match up the demand with the seller.

Mr. HOCH. Wherein does this bill set out any such power on his part?

Mr. AITCHISON. His duty to cooperate.

Mr. HOCH. Do you not think that needs some clarification to make it clear what you mean by cooperation if you are going to set out what the duties of a Federal officer are? Should not these duties be set out clearly?

Mr. GRAHAM. It was never intended that the distributer should be the administrative or executive officer, but that power must be exercised by the commission. He is simply a referee to get this information for the commission. The administrative power or the executive power does not change from where it now is. It is in the commission. Am I not right about that?

Mr. AITCHISON. Yes, sir. This relieves us from a duty. I do not think it is sound public policy as a business proposition that the Interstate Commerce Commission should have to do this, yet it is thrust upon us every time we are confronted with a situation of this sort, to be the coal distributer of the country.

Mr. GRAHAM. This gives you an agency by which you can get this information and go into a situation which the commission itself, because of its many duties, can not very well do?

Mr. AITCHISON. And which from a public policy standpoint can not be handled very well by the commission.

Mr. HOCH. Do you understand public policy to mean that he is to get the information and furnish it to the Interstate Commerce Commission?

Mr. AITCHISON. No. I take it he is to do just what he is doing at the present time, and it ought to be up to him to say that where the requisitions come from the State he can honor them to a certain extent. He will have to mark them down in a number of cases and then find if he can where the orders can be accepted and placed.

Mr. HOCH. Do you think it is clearly stated here?

Mr. AITCHISON. I thought so at the time we drew it. Perhaps it was because we had in mind clearly what was being done.

I want to make it perfectly clear that what I have said here is my own view and as an appointee of the President upon his presidential committee. The commission has had no chance whatever to consider this bill and I trust the position of the commission in the past that it never seeks jurisdiction is clearly in the minds of all the members of the committee. As a delegate of the presidential committee, we feel that it is our duty to make a frank statement of the facts to this committee and we can conceive of no better administrative remedy than we have pointed out.

Mr. GRAHAM. May I ask a question?

The CHAIRMAN. Yes, Mr. Graham.

Mr. GRAHAM. The President, in his recent message to Congress, stated that he thought some authority along the line of a purchasing agency might be necessary to be granted to him. Now, after that message was delivered I imagine your presidential committee, which was called together by the President as I understand it, have had that matter and this bill under consideration. Do you now, in view of what has been said by the President and in view of your consideration of the matter as a member of the President's committee, believe that the best thing that can be done by Congress is the passage of some such legislation as this we have before us?

Mr. AITCHISON. Oh, yes. That was very well expressed by Mr. Hoover this morning. The matter expressed by the President has been worked out on constitutional grounds and the administrative features have been very well worked out as much as possible consistent with the time, and time is the necessary thing.

(Thereupon, at 2.40, the committee adjourned.)

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